

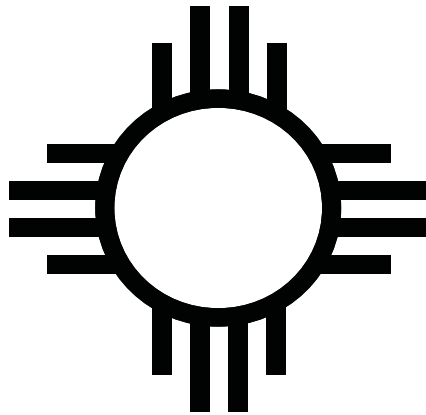
**NEW
MEXICO
REGISTER**



Volume XX
Issue Number 21
November 13, 2009

New Mexico Register

Volume XX, Issue Number 21
November 13, 2009



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2009

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New Mexico Register

Volume XX, Number 21

November 13, 2009

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Effective Date and Validity of Rule Filings

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

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

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE RULE

The State Board of Finance is in the process of revising one of its rules: Real Property Acquisitions, Sales, Trades or Leases. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe, NM 87501 and on the Board of Finance website, <http://board.nmdfa.state.nm.us>. The Board will consider adopting the proposed rule at its December 15, 2009 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Olivia Padilla-Jackson, 181 Bataan Memorial building, Santa Fe, NM 87501 by December 11, 2009.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, December 3, 2009**, beginning at 9:00 a.m., at the **New Mexico Junior College, Bob Moran Hall/Multi-Purpose Rooms 111-114, 5317 Lovington Highway, Hobbs, NM 88240**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; Depredation Report; Consideration of Application for a Shooting Preserve; General Public Comments (comments limited to 3 minutes); Transfer of Turkeys to Sandia Pueblo; Proposed Changes to the Fisheries Rule, 19.31.4, NMAC; Closed Executive Session; Notice of Commission Contemplated Action; and Land Acquisition and Disposal Report.

The following rules are available for public comment and consideration for adoption by the Commission:

- * Prospective Amendments to the Hunting and Fishing License Application Rule (19.31.3, NMAC) to Remove Certain Public Draw Restrictions;
- * Adoption of Amendments to the Hunting and Fishing License Application (19.31.3, NMAC) Rule;
- * Adoption of Amendments to the Deer Rule (19.31.13, NMAC);

- * Adoption of Amendments to New Mexico Hunter-Trapper Reporting System Rule (19.30.10, NMAC), and the Hunting and Fishing Application Rule (19.31.3, NMAC) to Modify Trapper License Purchasing Eligibility; and
- * Amendments to the Hunting & Fishing - Manner & Method of Taking Rule (19.31.10, NMAC), Regarding Unlawful Taking or Attempting to Take on Public Land.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Human Resources Division at (505) 476-8029. Please contact the Human Resources Division at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please also contact the Human Resources Division if a summary or other type of accessible form is needed.

NEW MEXICO DEPARTMENT OF HEALTH DIVISION OF HEALTH IMPROVEMENT

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.8.2 NMAC, "Assisted Living Facilities For Adults." The Hearing will be held on Monday, December 14, 2009 at 9:00 a.m. in the Harold Runnels Building auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The public hearing will be conducted to receive public comment regarding proposed repeal of the "Requirements for Adult Residential Care Facilities" and their replacement by the new rules, "Assisted Living Facilities For Adults." A copy of these materials may be obtained from, and written comments may be submitted by emails sent to: Shannon.Martinez@state.nm.us or you may write with a request or comments to her attention as follows:

Shannon Martinez
DOH/DHI/Health Facility Licensing & Certification Bureau
2040 S. Pacheco St. Room #413
Santa Fe, NM 87505

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Shannon Martinez at the email above address or call (505) 476-9030. The Department requests at least ten (10) days' advance notice for special accommodations requests.

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 December 14, 2009, from 10 a.m. to 12:00 p.m.. The Department is canceling the previously noticed public hearing that was scheduled for November 18, 2009. The purpose of the rescheduled public hearing will be to obtain input on the following rule:

Proposed Rule Number	Proposed Rule Name	Proposed Action
6.30.11 NMAC	ACADEMIC PROFICIENCY AND ATTENDANCE TIED TO INSTRUCTION PERMITS	Adopt new rule to establish requirements effective on 9/1/2011 for demonstrating 8th grade math & reading proficiency and meeting school attendance standards prior to receiving an MVD driving permit.

Interested individuals may testify at the public hearing and/or submit written comments regarding the proposed rulemaking to Willie Brown, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786; email: (Willie.Brown1@state.nm.us) (505) 827-6641 (telefax (505) 827-6681).

Written comments must be received no later than 5:00 pm on December 14, 2009. However, the submission of written comments as soon as possible is encouraged.

The proposed rule may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Willie Brown, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (Willie.Brown1@state.nm.us) (505) 827-6641 (telefax (505) 827-6681). The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Mary Deets as soon as possible, at (505) 827-6641). The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO
SUPERINTENDENT OF INSURANCE**

DOCKET NO. 09-00376-IN

**IN THE MATTER OF AMENDED
13.10.10 NMAC,
NEW MEXICO M E D I C A L
INSURANCE POOL PLAN OF
OPERATION
NOTICE OF PROPOSED
RULEMAKING, HEARING AND
PROCEDURAL ORDER**

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance (“Superintendent”) pursuant to NMSA 1978, Section 59A-2-9, proposes to amend 13.10.10 NMAC, the New Mexico Medical Insurance Pool Plan of Operation. The Superintendent, being otherwise fully advised, **FINDS and CONCLUDES THAT:**

1. The proposed rulemaking is intended to amend the Plan of Operations to conform with the Board of Directors’ vote to approve the following items, as described in paragraph 2, below.
2. The proposed amended rule is intended to facilitate Board operations as follows: to provide elected members of the Board the ability to appoint a voting representative and an alternate voting representative; and to clarify that Board committees may include, but are not limited to, an executive, finance and legal committee.

**COPIES OF PROPOSED
RULEMAKING ARE AVAILABLE:**

- a. by downloading from the Public Regulation Commission’s website, www.nmprc.state.nm.us, then clicking on the maroon-colored box labeled “Proposed Rules,” scroll down to “Insurance,” Docket No. 09-00376-IN, “Amended Rule 13.10.10 NMAC, the New Mexico Medical Insurance Pool Plan of Operation.”
- b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission’s Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$1.50 made payable to the Public Regulation Commission to cover the cost of copying; or
- c. for inspection and copying during regular business hours in the Public Regulation Commission’s Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking

and Procedural Order be issued.

IT IS FURTHER ORDERED that an **informal public hearing** pursuant to Section 59A-4-18 NMSA 1978 be held on Monday, November 30, at 11:00 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rulemaking. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file **written comments** on the proposed rulemaking on or before November 20, 2009. An original and (2) two copies of written comments and suggested changes concerning the proposed amended 13.10.10 NMAC, the New Mexico Medical Insurance Pool Plan of Operation, must be mailed or delivered to: NM Public Regulation Commission – Docketing Division, ATTN: Mariano Romero, RE: Proposed Rulemaking “Amended 13.10.10 NMAC, NMMIP Pool Plan of Operation” in Docket No. 09-00376-IN, Public Regulation Commission’s Docketing Office, Room 406, PO Box 1269, Santa Fe, NM 87504-1269. Telephone: (505) 827-4368. If possible, please also e-mail a copy of written comments as an attachment in Microsoft Word format to Melinda.Silver@state.nm.us, or call her at 505-827-6904 to notify her that comments were submitted to the Docketing Office. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406,

P.E.R.A. Building, 1120 Paseo de Peralta, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Section 2-11-1 et seq., NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, may contact the Docketing Office at (505) 827-4368. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should be addressed to Mr. Romero.

DONE, this 5th day of November, 2009.

**NEW MEXICO PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

Morris J. Chavez
Superintendent of Insurance

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF REGULAR MEETING AND EMERGENCY RULE HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Emergency Rule Hearing on November 19, 2009. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 9:30 a.m. The meeting will be held at the Boardroom, 4900 Alameda Blvd. NE, Albuquerque, NM, 87113.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.6 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

Julian Luna
Agency Director

Dated: November 2, 2009

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS LABOR RELATIONS DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Workforce Solutions, Labor Relations Division, has set a public hearing to amend Section 11.1.2.11 - 11.1.2.13 NMAC. The hearing complies with Section 13-4-11 NMSA 1978 and will

be held as follows:

**DATE: MONDAY, NOVEMBER 23,
2009**
TIME: 9:00 AM
**LOCATION: 1ST FLOOR
CONFERENCE ROOM
SILVER SQUARE
625 SILVER AVENUE
SW
ALBUQUERQUE,
NEW MEXICO 87102**

Interested persons may present their view either orally or in writing at the public hearing or by writing to the Director of the Labor Relations Division on or before the hearing date.

Anyone requiring special accommodations at the hearing must contact the Director's office no later than November 13, 2009.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1 NMAC Section 10, effective 11-13-2009.

16.60.1.10 FEES AND OBLIGATIONS: Fees charged by the board shall be as follows.

A. Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

B. Initial examination qualification review under Section 27F of the act shall be \$75.

C. Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$50.

D. Certificate application under Section 27B of the act shall be: initial certificate, \$175; certificate renewal, \$125.

E. No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

F. Firm permit application or renewal fee under Section 27C of the act shall be \$75 for each firm, regardless of form of entity.

G. Firm permit renewal delinquency fee under Section 27C of the act shall be \$50 and includes all practitioners whose renewal applications are delinquent.

H. Certificate/license reinstatement fee under Section 27G of the act shall be \$175 plus the current year's renewal fee. No delinquency fee shall be assessed.

I. No fee shall be charged for firm permit reinstatement, and no delinquency fee shall be assessed; only the current year's renewal fee shall be assessed.

J. Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

K. Administrative fees for services under Section 27F shall be:

(1) list of certificate or permit holders, \$250;

(2) duplicate or replacement certificate card or permit card, \$10 each;

(3) duplicate or replacement wall certificate, \$25 each;

(4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

(5) certificate application package for reciprocity and grade transfer candidates and replacement packages for by-examination candidates, \$20 each;

(6) copies of combined Accountancy Act and board rules, \$10 each;

(7) copies of records and documents, \$.25 per page;

(8) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

L. Fee for the transfer of licensure or examination information to a third party under Section 27E of the act shall be \$20.

M. Fee for criminal history background check under Section 8.1 of the act shall be ~~[\$29.25]~~ the amount established by the department of public safety for the processing of criminal history background checks.

N. The board may waive charges as it deems appropriate.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 01-15-2004; A, 04-29-2005; A, 11-30-2007; A, 06-30-2008; A, 05-29-2009; A, 11-13-2009]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC Section 13, effective 11-13-2009.

16.60.3.13 RECIPROcity REQUIREMENTS:

A. Interstate reciprocity: The board may issue a certificate/license to the holder of a certificate issued by a state other than New Mexico as defined under Sections 30, 11B and D, and 26A of the act provided that the license from the other state is valid and in good standing and that the applicant:

(1) provides proof from a board-approved national qualifications service that their CPA qualifications are substantially equivalent to the CPA requirements of the act; or

(2) successfully completed the CPA examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate; and

(3) meets the experience requirements under the act and these rules for issuance of the initial certificate; and

(4) has met the CPE requirement of the state in which he is currently licensed pursuant to the act and board rules; and

(5) has passed either the American institute of certified public accountants ethics examination with a score of 90 percent or higher or an ethics examination of another state board of accountancy with a score of 90 percent or higher.

B. An applicant who holds a certificate from another state based upon passage of the examination but who does not hold a license to practice shall not be eligible for licensure by reciprocity.

C. The board may rely on the national association of state boards of accountancy (NASBA), the American institute of certified public accountants (AICPA), or other professional bodies deemed acceptable to the board for evaluation of other state's CPA qualification requirements in making substantial equivalency determinations.

D. International reciprocity: The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a New Mexico CPA certificate and may issue a certificate/license to the holder of a professional accounting credential issued in a foreign country.

(1) The board may rely on NASBA, AICPA, or other professional bodies deemed acceptable to the board for evaluation of foreign credentials in making equivalency determinations.

(2) The board may satisfy itself through qualifying examination(s) that the holder of a foreign country credential deemed by the board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards and the board's rules. The board will specify the qualifying examination(s) and may rely on NASBA, AICPA, or other professional bodies to develop, administer, and grade such qualifying examination(s).

(3) The board recognizes the existence of the international qualifications appraisal board (IQAB), a joint body of NASBA and AICPA, which is charged with:

(a) evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

(b) negotiating principles of reciprocity agreements with the appropriate professional and governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

(4) The board shall honor the terms of all principles of reciprocity agreements issued by IQAB.

(5) The board recognizes the international uniform CPA qualification

examination (IQEX), written and graded by AICPA, as a measure of professional competency satisfactory to obtain a New Mexico certificate by reciprocity.

(6) The board may accept a foreign country accounting credential in partial satisfaction of its certificate/license requirements if:

(a) the holder of the foreign country accounting credential meets the issuing body's education requirement and has passed the issuing body's examination used to qualify its own domestic candidates; and

(b) the foreign country credential is valid and in good standing at the time of application for a certificate/license.

(7) The board shall accept the following foreign credentials in partial satisfaction of its certificate/license requirements:

(a) Canadian chartered accountant;

(b) Australian chartered accountant;

(c) Australian certified practising accountant;

(d) Mexican contador publicos certificado;

(e) chartered accountants in Ireland[-];

(f) New Zealand chartered accountant.

E. An applicant for renewal of a CPA certificate/license originally issued in reliance on a foreign country accounting credential shall:

(1) meet all board prescribed certificate/license renewal requirements; and

(2) present documentation from the foreign country accounting credential issuing body that the applicant's foreign country credential has not been suspended or revoked and is not the subject of a current investigation; and

(3) report any investigations undertaken or sanctions imposed by a foreign country credential body against the CPA's foreign country credential.

F. If the foreign country credential has lapsed, expired, or been cancelled, the applicant must present proof from the foreign country credentialing body that the certificate holder/licensee was not the subject of any disciplinary proceedings or investigations at the time the foreign country credential lapsed.

G. Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential by the foreign credentialing body shall be considered evidence of conduct reflecting adversely upon the CPA's fitness to retain the certificate and may be a basis for board action.

H. Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely

on the CPA's fitness to retain a certificate/license and is a basis for board action.

I. The board shall notify the appropriate foreign country credentialing authorities of any sanctions imposed against a CPA. The board may participate in joint investigations with foreign country credentialing bodies and may rely on evidence supplied by such bodies in disciplinary hearings.

[16.60.3.13 NMAC - Rp 16 NMAC 60.4.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 06-30-2008; A, 11-13-2009]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS

PART 19 EXPANDED PRACTICE CERTIFICATIONS

16.2.19.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.19.1 NMAC - N, 11-28-09]

16.2.19.2 SCOPE: All doctors of oriental medicine who are certified for expanded practice or who are applicants for certification for expanded practice, as well as all educational programs and students enrolled in an educational program.

[16.2.19.2 NMAC - N, 11-28-09]

16.2.19.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1.

[16.2.19.3 NMAC - N, 11-28-09]

16.2.19.4 DURATION: Permanent.

[16.2.19.4 NMAC - N, 11-28-09]

16.2.19.5 EFFECTIVE DATE: November 28, 2009, unless a later date is cited at the end of a section.

[16.2.19.5 NMAC - N, 11-28-09]

16.2.19.6 OBJECTIVE: This part lists the certification requirements for each of the following expanded practice categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

[16.2.19.6 NMAC - N, 11-28-09]

16.2.19.7 DEFINITIONS:

A. The definition in this section is in addition to those in the act and

16.2.1 NMAC.

B. The following definition applies to the rules and the act: "**educational course**" is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice; an educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

[16.2.19.7 NMAC - N, 11-28-09]

16.2.19.8 EXPANDED PRACTICE CERTIFICATION GENERAL PROVISIONS:

The four categories of expanded practice certification authorized by 61-14A-8.1. NMSA 1978 and defined in 16.2.19 NMAC that include, basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy shall all include the following provisions:

A. a doctor of oriental medicine or oriental medicine student enrolled in an educational course shall be authorized to perform the techniques and shall have the prescriptive authority, for the duration of the course, to administer and compound the substances that are authorized in the expanded practice formulary for which he is studying under the supervision of the board approved teacher for that educational course; under other circumstances the student shall not be authorized to obtain, prescribe or dispense such substances;

B. students enrolled in an educational program as defined in 16.2.1 NMAC shall be authorized to participate in a board approved basic injection therapy course and shall comply with the provisions of Subsection A of this section; upon successful completion of the course and submission of a complete application for certification to the board, such a student shall be appropriately certified by the board for basic injection therapy at the time of licensure as a doctor of oriental medicine;

C. the board shall maintain a list of each doctor of oriental medicine who is certified for each expanded practice category and shall notify the New Mexico board of pharmacy of all such certified licensees;

D. the board shall annually renew the certification or certifications of a doctor of oriental medicine in good standing who is certified for expanded practice if the licensee has completed all continuing education required by 16.2.9 NMAC;

E. all expanded practice and prescriptive authority certifications shall automatically terminate when licensure as a doctor of oriental medicine:

(1) is placed on inactive status as specified in 16.2.15 NMAC;

(2) expires as specified in 16.2.8 NMAC; or

(3) is suspended, revoked or terminated for any reason as defined in 16.2.12 NMAC;

F. an expanded practice certification that is revoked or terminated shall not be reinstated; the doctor of oriental medicine must reapply for expanded practice certification as a new applicant;

G. all expanded practice certifications that were automatically terminated due to inactive status, expiration or suspension as specified in Subsection E of this section, shall be automatically reinstated when licensure as a doctor of oriental medicine is reinstated, provided that:

(1) all fees required by 16.2.10 NMAC have been paid;

(2) all continuing education requirements specified in 16.2.9 NMAC have been completed; and

(3) all other relevant, reinstatement provisions, required by board rule, have been completed;

H. each year the board may review the expanded practice formularies for necessary amendments; when new substances are added to a formulary, appropriate education in the use of the new substances shall be approved and required by the board and the board of pharmacy for doctors of oriental medicine applying for new certification or as continuing education for renewal of the applicable expanded practice certification or certifications;

I. a doctor of oriental medicine certified for a category of expanded practice under 16.2.19 NMAC that authorizes the use of testosterone, a controlled substance, and any other drug that is classified as a controlled substance, shall register with the federal DEA (drug enforcement agency) prior to obtaining, prescribing, administering, compounding or dispensing the controlled substance;

J. a doctor of oriental medicine certified for expanded practice, when prescribing, shall use prescription pads printed with his or her name, address, telephone number, license number and his or her specific expanded practice certifications; if a doctor of oriental medicine is using a prescription pad printed with the names of more than one doctor of oriental medicine, the above information for each doctor of oriental medicine shall be on the pad and the pad shall have a separate signature line for each doctor of oriental medicine; each specific prescription shall indicate the name of the doctor of oriental medicine for that prescription and shall be signed by the prescribing doctor of oriental medicine;

K. a doctor of oriental medicine certified for expanded practice shall always, when diagnosing and treating a patient, use the skill and care ordinarily

used by reasonably well-qualified doctors of oriental medicine similarly certified and practicing under similar circumstances, giving due consideration to the locality involved; failure to comply with this fundamental requirement may result in denial, suspension or revocation of licensure or certification, or other disciplinary measures, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.;

L. when a doctor of oriental medicine is certified for injection therapy, this certification automatically supersedes his certification for basic injection therapy; and

M. the provisions for certification transition from extended prescriptive authority (Rx1) and expanded prescriptive authority (Rx2) to the expanded practice categories specified in 16.2.19 NMAC.

[16.2.19.8 NMAC - N, 11-28-09]

16.2.19.9 EX P A N D E D PRACTICE CERTIFICATION BOARD REQUIREMENTS:

A. The board shall have final authority for certification of all applicants.

B. The board shall notify the applicant in writing by mail postmarked no more than 30 days after the receipt of the initial application as to whether the application is complete or incomplete and missing specified application documentation.

C. The board shall notify the applicant in writing by mail postmarked no more than 30 days after the notice of receipt of the complete application sent out by the board, whether the application is approved or denied.

D. If the application is denied, the notice of denial shall state the reason the application was denied.

E. In the interim between regular board meetings the board's chairman or an authorized representative of the board shall issue an interim temporary expanded practice certification to a qualified applicant who has filed, with the board, a complete application and complied with all requirements for expanded practice certification. The interim temporary expanded practice certification shall automatically expire on the date of the next regular board meeting. Final expanded practice certification shall only be granted by the board.

F. The board shall have the authority to deny, suspend, revoke or otherwise discipline an expanded practice certification, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in the act and clarified in 16.2.12 NMAC.

[16.2.19.9 NMAC - N, 11-28-09]

16.2.19.10 EX P A N D E D PRACTICE SCOPE OF PRACTICE: (from 16.2.2.10 NMAC):

A. In addition to the scope of practice outlined in section 16.2.2 NMAC for a doctor of oriental medicine in New Mexico, the scope of practice for those certified in expanded practice shall include certification in any or all of the following modules: (61-14A-8.1BNMSA1978) basic injection therapy, injection therapy, intravenous therapy and bio-identical hormone therapy as specified in 16.2.19 NMAC.

B. The scope of practice for those doctors of oriental medicine certified in expanded practice shall also include the expanded practice and prescriptive authority defined in 61-14A-8.1C NMSA1978.

[16.2.19.10 NMAC - N, 11-28-09]

16.2.19.11 BASIC INJECTION THERAPY CERTIFICATION: The board shall issue, to a doctor of oriental medicine, certification for basic injection therapy upon completion of the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of successful completion of the basic injection therapy educational course specified in 16.2.18 NMAC.

[16.2.19.11 NMAC - N, 11-28-09]

16.2.19.12 INJECTION THERAPY CERTIFICATION: The board shall issue to a doctor of oriental medicine, certification for injection therapy, upon completion of the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of:

(1) current certification by the board for basic injection therapy; or

(2) any course combining basic injection therapy and injection therapy, as they are specified in the board's rules, or otherwise in accordance with law, must be completed within three years of the start of course.

E. The doctor of oriental medicine shall submit, with the application, proof of successful completion of the injection therapy educational course approved by the board.

[16.2.19.12 NMAC - N, 11-28-09]

16.2.19.13 INTRAVENOUS THERAPY CERTIFICATION: The board shall issue to a doctor of oriental medicine, certification for intravenous therapy, upon completion of the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of successful completion of any intravenous therapy educational course approved by the board.

[16.2.19.13 NMAC - N, 11-28-09]

16.2.19.14 BIOIDENTICAL HORMONE THERAPY CERTIFICATION: The board shall issue to a doctor of oriental medicine, certification for bioidentical hormone therapy, upon completion of the following requirements:

A. the doctor of oriental medicine shall be a doctor of oriental medicine in good standing;

B. the doctor of oriental medicine shall submit to the board the completed application form provided by the board;

C. the doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC; and

D. the doctor of oriental medicine shall submit, with the application, proof of successful completion of the bioidentical hormone therapy educational course approved by the board.

[16.2.19.14 NMAC - N, 11-28-09]

16.2.19.15 EXPANDED PRACTICE CERTIFICATION RENEWAL (FROM 16.2.8.13 NMAC):

A. If a doctor of oriental medicine certified for expanded prescriptive authority does not complete all expanded prescriptive authority continuing education

requirements specified in 16.2.9.9 NMAC within the 60 day grace period, the expanded prescriptive authority certification is expired and that licensee shall not be certified for expanded prescriptive authority until the continuing education is completed. Provided that all other renewal requirements have been received by the board, such a licensee shall continue to be licensed as a doctor of oriental medicine and is authorized for that scope of practice but shall not be authorized for the relevant expanded prescriptive authority scope of practice. For an expired expanded prescriptive authority certification, if a properly completed application for certification renewal, including proof of completion of the required expanded prescriptive authority continuing education, is received at the board office within one year of the last regular renewal date, the expanded prescriptive authority certification shall be renewed if all the requirements of late certification renewal during the 60 day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC, and the licensee also pays the fee for expired certification renewal specified in 16.2.10 NMAC. For each licensee whose expanded prescriptive authority certification has expired, the board shall notify the licensee by return receipt mail sent to the address on record that the expanded prescriptive authority certification has expired and shall notify the licensee that he or she must not practice those areas authorized by the expanded prescriptive authority certification until the prescriptive authority certification is renewed. This notification shall also contain an explanation of the procedures and fees for renewing the expanded prescriptive authority certification and the consequences of not renewing the expanded prescriptive authority. The board is responsible for sending the notification by return receipt mail in a timely manner to the address on record for the licensee and for maintaining a record of all such notifications sent, including the return receipt documents. The board is not responsible for verifying that the return receipt was returned by the post office to the board, for further follow up to verify that the notification was received or to locate and notify a licensee who has changed address without properly notifying the board of the new address. The licensee is responsible for notifying the board of the correct current address and of any address changes. Any licensee, after being properly notified as described above, who fails to renew, including completion of any required continuing education, his expired expanded prescriptive authority certification by the next July 31 annual license renewal date, after the notification shall be required to apply as a new applicant for expanded prescriptive authority certification. except that there

shall be a limited expanded prescriptive authority certification reinstatement period as specified in 16.2.8.13 NMAC.

B. The board may, on an individual basis, renew a license that has expired for more than one year if the former licensee can demonstrate good cause as specified in 16.2.1.7 NMAC.

C. The board shall report to the New Mexico board of pharmacy any expired license that was previously held by a doctor of oriental medicine who was is certified for the expanded prescriptive authority prescriptive authority and shall report to the New Mexico board of pharmacy any renewed or reinstated license of a doctor of oriental medicine who is certified for the expanded prescriptive authority.

[16.2.19.15 NMAC - N, 11-28-09]

16.2.19.16 TRANSITION PROVISIONS:

A. A doctor of oriental medicine, previously certified for extended prescriptive authority (Rx1) as of the effective date of this section, shall be automatically certified for basic injection therapy under the provisions of 16.2.19.10 NMAC.

B. A doctor of oriental medicine, previously certified for the expanded prescriptive authority (Rx2) as of the effective date of this section, shall be automatically certified for:

(1) injection therapy under the provisions of 16.2.19.11 NMAC basic injection therapy certification is automatically superseded by injection therapy certification;

(2) intravenous therapy under the provisions of 16.2.19.12 NMAC; and

(3) bioidentical hormone therapy under the provisions of 16.2.19.13 NMAC.

[16.2.19.16 NMAC - N, 11-28-09]

History of 16.2.19 NMAC: [RESERVED]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 2 ACUPUNCTURE
AND ORIENTAL MEDICINE
PRACTITIONERS
PART 20 EXPANDED
PRACTICE FORMULARY**

16.2.20.1 ISSUING AGENCY:
New Mexico Board of Acupuncture and
Oriental Medicine.

[16.2.20.1 NMAC - N, 11-28-09]

16.2.20.2 SCOPE: All doctors

of oriental medicine who are certified for expanded practice, or who are enrolled in an educational course, or who are applicants for certification for expanded practice, as well as all educational courses.

[16.2.20.2 NMAC - N, 11-28-09]

16.2.20.3 S T A T U T O R Y

AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1 NMSA 1978.

[16.2.20.3 NMAC - N, 11-28-09]

16.2.20.4 D U R A T I O N :

Permanent.

[16.2.20.4 NMAC - N, 11-28-09]

16.2.20.5 E F F E C T I V E D A T E:

November 28, 2009 unless a later date is cited at the end of a section.

[16.2.20.5 NMAC - N, 11-28-09]

16.2.20.6 O B J E C T I V E:

This part lists the formulary for each of the following expanded practice certification categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

[16.2.20.6 NMAC - N, 11-28-09]

16.2.20.7 D E F I N I T I O N S :

[RESERVED]

16.2.20.8 E X P A N D E D P R A C T I C E F O R M U L A R I E S

GENERAL PROVISIONS: The following general provisions shall apply to the expanded practice general formulary and each specific formulary for each specific expanded practice category that follows in this rule:

A. drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act;

B. all substances from threatened or endangered species, as determined by the convention on the international trade in endangered species of wild fauna and flora and the U.S. fish and wildlife service (<http://endangered.fws.gov/>), shall be automatically eliminated from expanded practice formularies;

C. definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in the expanded practice formularies;

D. a doctor of oriental medicine shall comply with all federal and state laws that pertain to obtaining, possessing, prescribing, compounding, administering and dispensing any drug;

E. a substance shall only be approved for use if procured in compliance

with all federal and state laws; the various expanded practice formularies do not supersede such laws; and

F. the following drugs, dangerous drugs and controlled substances are authorized in the modes of administration that are specified except as limited or restricted by federal or state law:

(1) **basic injection certification and prescriptive authority:** shall include topical vapocoolants the intradermal intramuscular, and subcutaneous injection of: homeopathic medicines; dextrose; enzymes except urokinase; hyaluronic acid; minerals; sarapin; sodium chloride; sterile water; and vitamins;

(2) **injection certification and prescriptive authority:**

(a) all substances from basic injection module; and

(b) all non-epidural, non intrathecal injection of: alcohol, amino acids, autologous oxygenated blood and appropriate anticoagulant, bee venom, beta glucans, collagenase, dextrose, dimethyl sulfoxide, gammaglobulin, glucose, glucosamine, glycerin, hyaluronidase, methylsulfonylmethane, phenol, phosphatidylcholine, procaine, sodium hyaluronate, sodium morrhuate;

(3) **intravenous certification and prescriptive authority:** amino acids, calcium ethylenediaminetetraacetic acid, dextrose, glutathione, lactated ringers, minerals, phosphatidylcholine, sodium bicarbonate sodium chloride, sodium morrhuate, sterile water, water soluble vitamins, autologous oxygenated blood infusion including ultraviolet radiation of blood with appropriate anticoagulant except that authority is not provided for total parenteral nutrition;

(4) **non-injectable bioidentical hormone certification and prescriptive authority:**

7-keto dehydroepiandrosterone (7 keto DHEA), cortisone, dehydroepiandrosterone (DHEA), dihydrotestosterone, estradiol (E2), estriol (E3), estrone (E1), hydrocortisone, pregnenolone, progesterone, testosterone, tetraiodothyronine (T4), levothyroxine, thyroxine (T4), & triiodothyronine (T3) combination, triiodothyronine, liothyronine (T3), desiccated thyroid;

G. applicable to any of the four certifications above: subcutaneous epinephrine, inhaled oxygen, and additives necessary to stabilize, preserve or balance pH of approved substances.

[16.2.20.8 NMAC - N, 11-28-09]

History of 16.2.20 NMAC: [RESERVED]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.1 NMAC Sections 2, 7, 9, and 11 effective 11-28-09.

16.2.1.2 SCOPE: All licensed doctors of oriental medicine, applicants, temporary licensees, applicants for temporary licensure, doctors of oriental medicine certified for expanded practice and applicants for certification, educational courses, externs, auricular detoxification specialists, educational programs and applicants for approval of educational programs.

[7-1-96; 16.2.1.2 NMAC - Rn & A, 16 NMAC 2.1.2, 8-13-01; A, 2-15-05; A, 11-28-09]

16.2.1.7 D E F I N I T I O N S:

A. The definitions in Subsection B of 16.2.1.7 NMAC [~~Part 1 of the rules~~] are in addition to those in the act.

B. The following definitions apply to the rules and the act.

(1) "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.

(2) "Animal acupuncture" is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1. to 61-14-20.) and the rules of the New Mexico board of veterinary medicine. (16.25.9.15 NMAC)

(3) "Applicant" is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.

(4) "Applicant for temporary licensure" is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.

(5) "Auricular detoxification specialist supervisor" is a doctor of oriental medicine registered with the board under the provisions of [~~Section 18 of 16.2.16 NMAC (Part 16 of the rules)~~] 16.2.16.18 NMAC.

(6) "Auricular detoxification specialist training program" is a training program approved by the board under the provisions of [~~Section 26 of 16.2.16 NMAC (Part 16 of the rules)~~] 16.2.16.26 NMAC to train certified auricular detoxification specialists and auricular detoxification supervisors.

(7) "Auricular detoxification specialist training program trainer" is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or

certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

(8) “Authorized substances” are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to 61-14A-8.1 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific category of expanded practice as defined in 16.2.19 NMAC.

(9) “Bioidentical hormones” are hormones that are chemically identical to, or analogues of hormones found in living entities or that have substantially identical physiological functions as hormones found in living entities. “Bioidentical hormones” means compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.

(10) “Biomedical diagnosis” is a diagnosis of a person’s medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, [9th] ninth revision, clinical modification (ICD-9-CM).

(11) “Biomedicine” is the application of the principles of the natural sciences to clinical medicine.

(12) “Certified auricular detoxification specialist” is a person certified by the board under the provisions of [Section 10 of 16.2.16 NMAC (Part 16 of the rules)] 16.2.16.10 NMAC to perform auricular detoxification techniques, including acupuncture, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. The title may be abbreviated as CADS.

(13) “Chief officer” is the board’s chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

(14) “Clinical skills examination” is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.

(15) “Clinical experience” is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year

of clinical experience shall consist of not less than ~~[five hundred (500)] 500~~ patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least ~~[twenty-five (25)] 25~~ different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.

(16) “Complainant” is the complaining party.

(17) “Complaint committee” is a board committee composed of the complaint committee chairperson and the complaint manager.

(18) “Complaint committee chairperson” is a member of the board appointed by the board’s chairperson.

(19) “Complaint manager” is the board’s administrator or any member of the board appointed by the board’s chairperson.

(20) “Department” is the state of New Mexico regulation and licensing department.

(21) “Doctor of oriental medicine” is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

(22) “Educational Course” is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

(23) “Educational program” is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the act and 16.2.7 NMAC [(Part 7 of the rules)].

(24) “Expanded [prescriptive authority] practice” is authorized by Section [61-14A-3.G.(4) and (5), and 61-14A08.1] 61-14-8.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in [Section 11 of 16.2.2 NMAC (Part 2 of the rules)] 16.2.19 NMAC. Expanded [prescriptive authority] practice is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. [Expanded prescriptive authority may be abbreviated as Rx2.]

(25) “Extended prescriptive authority” is authorized by Section 61-14A-3.H(4) and (5), and 61-14A-8.1 of the act and is granted to a doctor of oriental

medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in Section 10 of 16.2.2 NMAC (Part 2 of the rules). ~~Extended prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. Extended prescriptive authority may be abbreviated as Rx1-]~~

(26) “Extern” is a current applicant undergoing supervised clinical training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC [(Part 14 of the rules)].

(27) “Externship” is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC [(Part 14 of the rules)].

(28) “Externship supervisor” is a doctor of oriental medicine who has at least five years clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board’s application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC [(Part 14 of the rules)].

(29) “Good cause” is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

(30) “Inactive licensee” means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC [(Part 15 of the rules)].

(31) “Licensee” is a doctor of oriental medicine licensed pursuant to the act.

(32) “Licensing candidate” is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

(33) “Licensure by endorsement” is a licensing procedure for the experienced practitioner who completed his [or her] initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC [(Part 17 of the rules)].

Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

[(32)] (33) "Limited temporary license" is a license issued under the provisions of [Section 12 of 16.2.5 NMAC (Part 5 of the rules)] 16.2.5.12 NMAC for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by [a] licensed, registered, certified or legally recognized healthcare [practitioner] practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

[(33)] (34) "Live cell products" are living cells from glandular tissues and other tissues.

[(34)] (35) "Natural substances" [are physical matter including atoms, molecules, elements and compounds that exist in nature or are formed by natural forces, processes or entities including their constituents, preparations, concentrates, refinements, isolates, extracts, derivatives, byproducts, ligands and metabolites, and the synthetic chemical surrogates, isomers and analogues of these. A natural substance may be the crude substance, a prepared form that renders the crude substance clinically useful, a constituent derived from the crude substance, or a synthesized chemical surrogate, isomer or analogue of the constituent. Natural substances may be classified as drugs, dangerous drugs or controlled substances as these are defined in the New Mexico Drug Device and Cosmetic Act or the Controlled Substances Act.] are substances that exist in or are produced by nature and have not been substantially transformed in character or use.

[(35)] (36) "NCA" is a notice of contemplated action.

[(36)] (37) "Office" is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

[(37)] (38) "Oxidative medicine" is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body's oxidation and reduction function and health.

[(38)] "~~Post graduate educational~~

~~program" is an educational program that meets the requirements of Section 61-14A-8.1 NMSA 1978 of the act and 16.2.2 NMAC (Part 2 of the board's rules).~~

~~(a) Extended prescriptive authority.~~

~~(b) Expanded prescriptive authority.]~~

(39) "Protomorphogens" are extracts of glandular tissues.

(40) "Respondent" is the subject of the complaint.

(41) "Rules" are the rules, promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC [(Title 16 - Occupational and Professional Licensing; Chapter 2 - Acupuncture and Oriental Medicine)].

(42) "Supervised clinical observation" is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(43) "Supervised clinical practice" is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(44) "Supervision" is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC [(Part 7 of the rules)]. No more than four (4) students shall be under supervision for supervised clinical practice and no more than four [(4)] students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

(45) "Temporary licensee" is a doctor of oriental medicine who holds a temporary license pursuant to the act, Section 61-14-12 NMSA 1978 and 16.2.5 NMAC [(Part 5 of the rules)].

(46) "Treatment program" is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of [Section 28 of 16.2.16 NMAC (Part 16 of the rules)] 16.2.16.28 NMAC. [11-3-81...7-1-96; N, 8-31-98; A, 2-17-00; 16.2.1.7 NMAC - Rn & A, 16 NMAC 2.1.7, 8-13-01; A, 4-4-02; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09]

16.2.1.9 PUBLIC RECORDS: All records kept by the board shall be available for public inspection pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1, et seq., except as provided herein.

A. During the course of the investigation or processing of a complaint, and before the vote of the board as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and in order to preserve the integrity of the investigation of the complaint, records and documents that reveal confidential sources, methods, information or licensees accused, but not charged yet with a violation of the act, shall be confidential and shall not be subject to public inspection. Such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the board by any investigating agent or agency.

B. Upon the completion of the investigation or processing of the complaint, and upon the decision of the board to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege conferred by Subsection A of 16.2.1.9 NMAC [(Part 1 of the rules)] shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection.

C. All tests and test questions by which applicants are tested shall not be available to public inspection, as there is a countervailing public policy requiring that such records remain confidential in order to ensure the integrity of a licensing exam intended to protect the public health, safety and welfare from incompetent practitioners.

D. The board or its administrator may charge a fee not to exceed one dollar [(\$1.00)] per page for documents [eleven (11) inches by [seventeen (17)] 17 inches or smaller in size for copying public records.

[3-19-91...7-1-96; 16.2.1.9 NMAC - Rn & A, 16 NMAC 2.1.9, 8-13-01; A, 3-2-03; A, 11-28-09]

16.2.1.11 DISASTER OR EMERGENCY PROVISION: Doctors of oriental medicine, educational programs and auricular detoxification specialists currently licensed and in good standing or otherwise meeting the requirements for New Mexico licensure in a state which a federal disaster has been declared may apply for licensure in New Mexico under 16.2.1.11 NMAC during the four months following the declared disaster. The application for emergency provisional licensure shall be made to the board and shall include:

A. an application under this provision shall be made to the board that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number accompanied by

proof of identity, which may include a copy of drivers license, passport or other photo identification issued by a governmental entity; and the applicants signature on the affidavit made part of the application form; [and]

B. an affidavit attesting to the consequences suffered by the applicant as a result of the federal disaster; [and]

C. evidence of completion of requirements specified in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC [(Parts 3, 4, 7, 10 and 16 of the board's rules)]; if the applicant is unable to obtain documentation from the federal declared disaster area or as a result of the declared federal disaster the board may accept other documentation in lieu of the forms required under 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC [(Parts 3, 4, 7, 10 and 16 of the board's rules)]; the board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving licensure; [and]

D. exceptions may be made for good cause; [and]

E. an affidavit certifying that all the documents submitted with the application are true and accurate or are faithful copies of the original; [and]

F. nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC [(Parts 3, 4, 7, 10 and 16 of the board's rules)]; and

H. the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine.

[16.2.1.11 NMAC - N, 9-25-06; A, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.2 NMAC Sections 2, 6, 8, 9, 10 and 12 and the repeal of Sections 11, 13, and 14 effective 11-28-09.

16.2.2.2 SCOPE: All licensed doctors of oriental medicine, all licensed doctors of oriental medicine certified for [the extended (Rx1) or expanded (Rx2) prescriptive authority] expanded practice as defined in 16.2.19 NMAC, temporary licensees engaging in only those activities authorized on the temporary license, externs engaging in only those activities authorized by the externship and students enrolled in an educational program in acupuncture and

oriental medicine approved by the board working under the direct supervision of a teacher at the approved educational program as part of the educational program in which they are enrolled.

[16.2.2.2 NMAC - Rp, 16.2.2.2 NMAC, 02-15-05; A, 11-28-09]

16.2.2.6 OBJECTIVE: This part clarifies the scope of practice of doctors of oriental medicine, temporary licensees, externs and students [and defines the requirements for extended (Rx1) and expanded (Rx2) prescriptive authority.] and doctors of oriental medicine certified for expanded practice.

[16.2.2.6 NMAC - Rp, 16.2.2.6 NMAC, 02-15-05; A, 11-28-09]

16.2.2.8 SCOPE OF PRACTICE: Pursuant to Section 61-14A-3 NMSA 1978, the practice of oriental medicine in New Mexico is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy, form and [functioning of the person] function to restore and maintain health. Oriental medicine includes all traditional and modern diagnostic, prescriptive and therapeutic methods utilized by practitioners of acupuncture and oriental medicine [worldwide]. The scope of practice of doctors of oriental medicine shall include but is not limited to:

A. evaluation, management and treatment services;

B. diagnostic examination, testing and procedures;

C. the ordering of diagnostic imaging procedures and laboratory or other diagnostic tests;

D. the surgical procedures of acupuncture and other related procedures [as well as injection therapy; injection therapy may only be performed by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 16.2.2.11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules)];

E. the stimulation of points, areas of the body or substances in the body using qi, needles, heat, cold, color, light, infrared and ultraviolet, lasers, sound, vibration, pressure, magnetism, electricity, electromagnetic energy, bleeding, suction, or other devices or means;

F. physical medicine modalities, procedures and devices; [spray and stretch techniques using prescription vapocoolants may only be performed by a

doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 NMAC (Section 10 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);]

G. therapeutic exercises, qi exercises, breathing techniques, meditation, and the use of biofeedback devices and other devices that utilize heat, cold, color, light, infrared and ultraviolet, lasers, sound, vibration, pressure, magnetism, electricity, electromagnetic energy and other means therapeutically;

H. dietary and nutritional counseling and the prescription or administration of food, beverages and dietary supplements therapeutically;

I. counseling and education regarding physical, emotional and spiritual balance in lifestyle;

J. [the prescription or administration of] prescribing, administering, combining, providing, compounding and dispensing any non-injectable herbal medicine, homeopathic [medicine] medicines, vitamins, minerals, enzymes, glandular products, natural substances, protomorphogens, live cell products, [gerovital], amino acids, [and] dietary and nutritional supplements; [the injection of any of the above substances may only be performed by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 16.2.2.11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules)]; cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act and nonprescription drugs as they are defined in the Pharmacy Act;

[K. the prescription or administration of cosmetics, biological products including therapeutic serum and over the counter drugs other than those enumerated in Section 61-14A-3.G.(2) of the act by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 16.2.2.11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);]

L. the prescription or administration of sterile water, sterile saline, sarapin or its generic and vapocoolants by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12

of the act and 16.2.5 NMAC (Part 5 of the rules);

~~M. the prescription or administration of caffeine, procaine, oxygen, epinephrine, bioidentical hormones and those substances listed in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules) by a doctor of oriental medicine who is certified for the expanded prescriptive authority (Rx2) pursuant to 16.2.2.11 NMAC (Section 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);~~

[N.] ~~K.~~ the prescription or administration of devices, restricted devices and prescription devices as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978) by a doctor of oriental medicine who meets the requirements of 16.2.2.9 NMAC [(Section 9 of Part 2 of the rules)].

[16.2.2.8 NMAC - Rp, 16.2.2.8 NMAC, 02-15-05; A, 11-28-09]

16.2.2.9 D E V I C E S , RESTRICTED DEVICES AND PRESCRIPTION DEVICES:

The board determines that devices, restricted devices and prescription devices as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978) are necessary in the practice of oriental medicine. Doctors of oriental medicine who have the training recommended by the manufacturer of the device shall be authorized to prescribe [or], administer or dispense the device.

[16.2.2.9 NMAC - Rp, 16.2.2.9 NMAC, 02-15-05; A, 11-28-09]

16.2.2.10 [EXTENDED PRESCRIPTIVE AUTHORITY CERTIFICATION (RX1) SCOPE OF PRACTICE FOR EXPANDED PRACTICE:

[The board shall certify a doctor of oriental medicine in good standing for extended prescriptive authority (Rx1) as provided herein:

A. The doctor of oriental medicine shall file a completed and signed application form provided by the board and shall pay the administrative fee for extended prescriptive authority (Rx1) application specified in 16.2.10 NMAC (Part 10 of the rules):

B. The doctor of oriental medicine shall submit proof of completion of the following education, satisfactory to the board, in the pharmacology and general use of the drugs authorized for use under the extended prescriptive authority (Rx1) provisions of Section 61-14A-3.G.(4) and (5) and Section 61-14A-8.1 of the act. Such education shall have been earned in classes pre-approved by the board and shall be taught by qualified teachers as approved

by the board. All pharmacology shall be taught by a licensed pharmacist, PharmD or a Ph.D. in pharmacology. The education in the therapeutic use of the drugs shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the drugs. The board shall have final authority for approval of classes and teachers. All classes may be video recorded and transcribed for approval by the board for future presentation of the class. Testing shall be administered as approved by the board to insure that the material presented in the classes has been learned. The entire educational program shall be completed within two (2) years. The above education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine. The education shall include a minimum of sixty (60) hours in the following areas with one (1) hour of education equal to that defined by the accreditation commission for acupuncture and oriental medicine (ACAOM):

(1) twenty-eight (28) hours in the theory and practice of injection therapy such as trigger point injection therapy, neural injection therapy, prolo therapy, mesotherapy, endotherapy, nerve blocks and therapeutic injections using the authorized drugs in the prescriptive authority formulary defined in 16.2.2.13 (Section 13 of Part 2 of the rules) as well as vapocoolant spray and stretch techniques; intravenous injection and infusion therapy are not authorized under the extended prescriptive authority (Rx1) certification; the course shall include classes in: anatomy, physiology, pathology, biochemistry, pharmacology, diagnostic methodology, clinical strategies, contraindications and safeguards;

(2) fourteen (14) hours in orthopedic and neurological evaluation;

(3) seven (7) hours in biomedical differential diagnosis relative to the prescription or administration of the authorized drugs;

(4) five (5) hours in the pharmacology, application and clinical use of cosmetics and over-the-counter drugs;

(5) three (3) hours in the compounding of the authorized drugs intended for injection utilizing approved aseptic technique;

(6) one (1) hour in the proper record keeping, storage and dispensing of dangerous drugs;

(7) one (1) hour of pharmaceutical law as provided by the New Mexico board of pharmacy;

(8) one (1) hour in oriental medicine scope of practice relative to the authorized substances and techniques;

C. The education and training completed by a doctor of oriental

medicine who is certified for extended prescriptive authority (Rx1) may be credited towards the education required for expanded prescriptive authority (Rx2) certification.

D. The board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the receipt of the complete application whether the application is accepted or rejected. If the application is rejected, the notice of rejection shall state the reason the application was rejected:

E. The extended prescriptive authority (Rx1) certification shall automatically terminate when the license lapses, is suspended, revoked or terminated for any reason:

F. A doctor of oriental medicine certified for extended prescriptive authority (Rx1) shall be designated as such by the addition of "Rx1" after his or her license number. The board shall maintain a list of each doctor of oriental medicine who is certified for extended prescriptive authority (Rx1) and shall notify the New Mexico board of pharmacy of all licensees certified for extended prescriptive authority (Rx1):

G. A doctor of oriental medicine certified for the extended prescriptive authority (Rx1) shall complete all continuing education required by 16.2.9 NMAC (Part 9 of the rules):

A. In addition to the scope of practice for a licensed New Mexico doctor of oriental medicine, the scope of practice for those certified in expanded practice shall include certification in any or all of the following modules: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy. practitioners previously certified as Rx1 extended prescriptive authority, will be certified for basic injection therapy and practitioners previously certified as Rx2 expanded prescriptive authority, will be certified for injection therapy, intravenous therapy and bioidentical hormone therapy.

B. The expanded practice shall include:

(1) the prescribing, administering, compounding and dispensing of herbal medicines, homeopathic medicines, vitamins, minerals, amino acids, proteins, enzymes, carbohydrates, lipids, glandular products, natural substances, natural medicines, protomorphogens, live cell products, gerovital, dietary and nutritional supplements, cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act (26-1-1 NMSA 1978) and nonprescription drugs as they are defined in the Pharmacy Act (61-11-1 NMSA 1978); and

(2) the prescribing, administering, compounding and dispensing of the following dangerous drugs or controlled

substances as they are defined in the New Mexico Drug, Device and Cosmetic Act, the Controlled Substances Act (30-31-1 NMSA 1978) or the Pharmacy Act:

- (a) sterile water;
- (b) sterile saline;
- (c) sarapin or its generic;
- (d) caffeine;
- (e) procaine;
- (f) oxygen;
- (g) epinephrine;
- (h) vapocoolants;
- (i) bioidentical hormones; and
- (j) biological products, including therapeutic serum.

C. When compounding drugs for their patients, doctors of oriental medicine certified for expanded practice and prescriptive authority shall comply with the compounding requirements for licensed health care professionals in the United States pharmacopeia and national formulary.

[16.2.2.10 NMAC - N, 02-15-05; A, 11-28-09]

16.2.2.11 [EXPANDED PRESCRIPTIVE AUTHORITY CERTIFICATION (Rx2)]: The board shall certify a doctor of oriental medicine in good standing for expanded prescriptive authority (Rx2) as provided herein:

A. The doctor of oriental medicine shall file a completed and signed application form provided by the board and shall pay the administrative fee for expanded prescriptive authority (Rx2) application specified in 16.2.10 NMAC (Part 10 of the rules):

B. The education and training required for extended prescriptive authority (Rx1) certification defined in 16.2.2.10 NMAC (Section 10 of Part 2 of the rules) shall be a prerequisite for the education and training required for expanded prescriptive authority (Rx2) certification:

C. The doctor of oriental medicine shall submit proof of completion of the following education, satisfactory to the board, in the pharmacology and general use of the drugs authorized for use under the expanded prescriptive authority (Rx2) provisions of Section 61-14A-3.G.(4) and (5) and Section 61-14A-8.1 of the act. Such education shall have been earned in classes pre-approved by the board and shall be taught by qualified teachers as approved by the board. All pharmacology shall be taught by a licensed pharmacist, PharmD or a Ph.D. in pharmacology. The education in the therapeutic use of the drugs shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the drugs. The board shall have final authority for approval of classes and teachers. All classes may be video recorded and transcribed for approval by the board for future presentation

of the class. Testing shall be administered as approved by the board to insure that the material presented in the classes has been learned. The entire educational program shall be completed within two (2) years. The above education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine. The education shall include a minimum of ninety-five (95) hours in the following areas with one (1) hour of education equal to that defined by the accreditation commission for acupuncture and oriental medicine (ACAOM):

(1) Fourteen (14) hours in the theory and practice of injection therapy such as trigger point injection therapy, neural injection therapy, prolo therapy, mesotherapy, endotherapy, nerve blocks, therapeutic injections and intravenous therapy using the authorized drugs in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules). The course shall include classes in: anatomy, physiology, pathology, biochemistry, pharmacology, diagnostic methodology, clinical strategies, contraindications and safeguards:

(2) Fourteen (14) hours in oxidative and ultraviolet medicine and the use of oxygen therapeutically:

(3) Fourteen (14) hours in metal detoxification and chelation therapy using vitamins, natural substances, amino acids and those substances used for chelation therapy listed in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules):

(4) Thirty (30) hours in the theory and practice of bioidentical hormone therapy. The course shall include classes in: anatomy, physiology, endocrinology, pathology, biochemistry, pharmacology, diagnostic imaging, diagnostic procedures, clinical strategies, contraindications, safeguards, and specialist referral:

(5) Twelve (12) hours in blood, urine and saliva hormone diagnostic testing and evaluation:

(6) Seven (7) hours in biomedical differential diagnosis relative to the prescription or administration of the authorized drugs:

(7) Two (2) hours in the compounding of the authorized drugs intended for injection utilizing approved aseptic technique:

(8) One (1) hour in the proper record keeping, storage and dispensing of the dangerous drugs and controlled substances:

(9) One (1) hour in oriental medicine scope of practice:

D. The board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the receipt of the complete application whether

the application is accepted or rejected. If the application is rejected, the notice of rejection shall state the reason the application was rejected:

E. The expanded (Rx2) prescriptive authority certification shall automatically terminate when the license lapses, is suspended, revoked or terminated for any reason:

F. A doctor of oriental medicine certified for expanded prescriptive authority (Rx2) shall be designated as such by the addition of "Rx2" after his or her license number. The board shall issue a wallet size license card to each doctor of oriental medicine that shall contain the licensee's name, and license number followed by "Rx2" if applicable. The board shall maintain a list of each doctor of oriental medicine who is certified for expanded prescriptive authority (Rx2) and shall notify the New Mexico board of pharmacy of all licensees certified for expanded prescriptive authority (Rx2):

G. A doctor of oriental medicine certified for the expanded prescriptive authority (Rx2) shall register with the federal DEA (drug enforcement agency) to authorize the use of testosterone, a controlled substance, and any other drug that is classified as a controlled substance and that is within the prescriptive authority of a doctor of oriental medicine as defined in the act and this rule and as listed in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules):

H. A doctor of oriental medicine certified for the expanded prescriptive authority (Rx2) shall complete all continuing education required by 16.2.9 NMAC (Part 9 of the rules): [RESERVED] [16.2.2.11 NMAC - Rp 16.2.2.10 NMAC, 02-15-05; Repealed, 11-28-09]

16.2.2.12 PRESCRIPTION PADS: A doctor of oriental medicine, when prescribing, shall use prescription pads imprinted with his [her] name, address, telephone number and license number. [If a doctor of oriental medicine is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority, the "Rx1" or "Rx2" designation shall be included after the license number.] If a doctor of oriental medicine is using a prescription pad printed with the names of more than one doctor of oriental medicine, each doctor of oriental medicine shall have a separate signature line indicating the name and license number [followed by "Rx1" or "Rx2" designation if applicable]. Each specific prescription shall indicate the name of the doctor of oriental medicine for that prescription.

[16.2.2.12 NMAC - Rp 16.2.2.11 NMAC, 02-15-05; A, 11-28-09]

16.2.2.13**[PRESCRIPTIVE**

AUTHORITY FORMULARY: A doctor of oriental medicine is authorized to prescribe, dispense or administer only the drugs not listed by the designation Rx after a specific substance in Subsections A to L of this prescriptive authority formulary (16.2.2.13 NMAC) and is not authorized to prescribe the drug if it is classified as a dangerous drug or controlled substance or administer the drug by injection. A doctor of oriental medicine certified for extended prescriptive authority (Rx1) is authorized to prescribe, dispense or administer only the drugs listed in Subsections A to S of this prescriptive authority formulary (16.2.2.13 NMAC) and is only authorized to administer them in compliance with the techniques defined in 16.2.2.10 NMAC (Section 10 of Part 2 of the rules), except that injection of gerovital (buffered procaine) is not authorized and intravenous injection or infusion therapy is not authorized. A doctor of oriental medicine certified for expanded prescriptive authority (Rx2) is authorized to prescribe, dispense or administer all drugs listed in this prescriptive authority formulary (16.2.2.13 NMAC). Drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act. All drugs listed in this prescriptive authority formulary that at any time have been classified as dangerous drugs or controlled substances, including those intended for injection are within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority. A drug listed in this prescriptive authority formulary that at any time is classified as a schedule I controlled substance, as defined in the New Mexico Controlled Substances Act, is within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority if at any time that drug is authorized for research or use by prescription or administration by a practitioner. This prescriptive authority formulary is an evolving document. All substances from threatened or endangered species as determined by the convention on the international trade in endangered species of wild fauna and flora (CITES at www.cites.org) and the US fish and wildlife service (<http://endangered.fws.gov/>) shall be automatically eliminated from this prescriptive authority formulary. Definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in this prescriptive authority formulary. Doctors of oriental medicine must comply with all federal and state laws pertaining to the obtaining,

possession, prescription, compounding, administration or dispensing of any drug, dangerous drug or controlled substance. Any substances for injection or infusion shall only be approved for use if procured from a manufacturer or compounding pharmacy compliant with all federal and state laws. This prescriptive authority formulary does not supersede such laws. A doctor of oriental medicine certified for the extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority, when diagnosing and treating a patient, shall possess and apply the knowledge and use the skill and care ordinarily used by other similarly certified doctors of oriental medicine.

A. All herbal medicines from around the world.

B. All homeopathic medicines.

C. All vitamins including their surrogates, isomers and analogues. Doctors of oriental medicine certified for the extended prescriptive authority (Rx1) are authorized to inject these substances except that intravenous injection therapy is not authorized under the extended prescriptive authority (Rx1) certification. Doctors of oriental medicine certified for the expanded prescriptive authority (Rx2) are authorized to administer these substances through any means including intravenous therapy.

D. All minerals from the periodic table including the salts of calcium and magnesium such as ammoniates, anhydrides, ascorbates, aspartates, chlorides, citrates, gluconates, fumarates, iodates, sulfates, etc., except the injection of gold.

E. All enzymes except urokinase.

F. All glandular products.

G. Natural substances. The authorized natural substances are:

(1) adenosine triphosphate (ATP)

(2) alcohols

(3) acetylcysteine (mucomist) Rx

(4) bee venom (apis)

(5) benzyl alcohol

(6) carbohydrates

(7) colchicine Rx

(8) cytokines

(9) dextrose

(10) EDTA

(a) ethylenediamine tetraacetic acid

(b) disodium ethylenediamine tetraacetic acid

(c) trisodium ethylenediamine tetraacetic acid

(11) fatty acids

(12) flavonoids

(13) fructose

(14) gamaglobulin

(15) glucose

(16) glucosamine

(17) glutathione

(18) glycerine

(19) haemaglobulin

(20) heparin Rx

(21) hyaluronic acid

(22) hydrochloric acid

(23) hydrogen peroxide

(24) lipids

(25) ozone

(26) phenol (carbolic acid) Rx

(27) proteins

(28) pumice

(29) sodium hyaluronate

(30) sodium morrhuate

(extract of cod liver oil)

(31) sulfur compounds. Examples are:

(a) DMPS (dimercaptopropane-1-sulphonate)

(b) DMSO (dimethyl sulfoxide)

(c) DMSA (dimercaptosuccinic acid) Rx

(d) MSM (methylsulfonyl methane)

(32) tetrahydropalmitine (extract of corydalis)

(33) all natural substances from the traditional natural medicines of the world

(34) all substances in the natural medicines comprehensive database.

H. All protomorphogens.

I. All live-cell products.

J. Gerovital.

K. All amino acids.

L. All dietary and nutritional supplements.

M. All cosmetics as defined in the New Mexico Drug, Device and Cosmetic Act.

N. All biological products including therapeutic serum. Biological products and therapeutic serum are defined in the New Mexico Drug, Device and Cosmetic Act.

O. All over the counter drugs available without a prescription. Drugs are defined in the New Mexico Drug, Device and Cosmetic Act.

P. Sterile water.

Q. Sterile saline.

R. Sarapin (or its generic).

S. Vapocoolants:

(1) Ethyl chloride

(2) Fluori-methane

T. Caffeine.

U. Procaine.

V. Oxygen.

W. Epinephrine.

X. Bioidentical hormones.

The authorized hormones are:

(1) adrenocortical hormones (adrenocorticosteroids; cortical hormones)

(a) androgens (17-ketosteroids; dehydroisoandrosterone, androstenedione, testosterone)

(b) estrogens

(c) glucocorticoids (hydrocortisone or cortisol, cortisone, corticosterone)

~~(d) mineralocorticoids (aldosterone, dehydroepiandrosterone DHEA)~~

~~(e) progesterone~~

~~(2) adrenomedullary hormones~~

~~(a) epinephrine~~

~~(b) norepinephrine~~

~~(3) anterior pituitary hormones~~

~~(4) sex hormones~~

~~(a) androstenedione~~

~~(b) androsterone~~

~~(c) estradiol (E2)~~

~~(d) estriol (E3)~~

~~(e) estrone (E1)~~

~~(f) progesterone~~

~~(g) testosterone~~

~~(5) thyroid hormones~~

~~(a) 3, 5-diiodothyronine (T2)~~

~~(b) calcitonin~~

~~(c) monoiodothyronine (T1)~~

~~(d) thyroxine; levothyroxine (T4)~~

~~(e) triiodothyronine; liothyronine (T3); [RESERVED]~~

[16.2.2.13 NMAC - N, 02-15-05; Repealed, 11-28-09]

16.2.2.14 [REVIEW OF THE PRESCRIPTIVE AUTHORITY FORMULARY:

~~Each year the board may review the prescriptive authority formulary for necessary amendments. When new substances are added to the formulary, appropriate education in the use of the new substances shall be approved and required by the board for doctors of oriental medicine applying for new certification or continuing education for renewal in the extended (Rx1) or expanded (Rx2) prescriptive authority.] [RESERVED]~~

[16.2.2.14 NMAC - N, 02-15-05; Repealed, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.3 NMAC Sections 9, 10, 11, 13, 14, 15 and 16 effective 11-28-09.

16.2.3.9 EDUCATIONAL PROGRAM REQUIREMENTS:

Every applicant shall provide satisfactory proof that he ~~[or she has]~~ completed a board approved educational program as defined in 61-14A-14 of the act and 16.2.7 NMAC ~~[(Part 7 of the rules)]~~. If the educational program is no longer in existence, or if the applicant's records are not available for good cause, the applicant shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept or reject as adequate

and sufficient such evidence presented in lieu of the records otherwise required.

[11-3-81...7-1-96; 8-31-98; 5-15-99; 16.2.3.9 NMAC - Rn, 16 NMAC 2.3.9, 5-20-00; A, 7-27-01; A, 02-15-05; A, 11-28-09]

16.2.3.10 INITIAL LICENSURE APPLICATION:

Upon approval of an application for licensure that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure. The application requirements for a license shall be receipt of the following by the board:

A. the fee for application for licensure specified in 16.2.10 NMAC ~~[(Part 10 of the rules); and];~~

B. an application for licensure that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

C. two ~~[(2)]~~ passport-type photographs of the applicant taken not more than six months prior to the submission of the application; ~~[and]~~

D. an affidavit as provided on the "initial licensure application" as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; ~~[or]~~

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; ~~[or]~~

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; ~~[or]~~

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; ~~[and]~~

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where

the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; ~~[and]~~

F. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC ~~[(Subsection 10D of Part 3 of the rules)]~~ may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; ~~[and]~~

G. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; ~~[and]~~

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within ~~[ten (10)]~~ 10 days if the applicant's address changes; ~~[and]~~

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the required program; this copy shall include on it an affidavit certifying that it is a true copy of the original; ~~[and]~~

I. an official copy of the applicant's transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; this copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant's application for licensure; and

J. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[11-3-81...7-1-96; 8-31-98; 5-15-99, 12-1-99; 16.2.3.13 NMAC - Rn & A, 16 NMAC 2.3.13, 5-20-00; 16.2.3.10 NMAC - Rn, 16.2.3.13 NMAC, 7-27-01; A, 7-27-01; A, 3-2-03; A, 02-15-05; A, 11-28-09]

16.2.3.11 EXAMINATION REQUIREMENTS: The examination requirements specified in 16.2.4 NMAC [(Part 4 - Examination Requirements of the rules)] shall be received at the board office within [twelve (12)] 12 months of the receipt of the initial application at the board office. [11-3-81...7-1-96; 8-31-98; 5-15-99, 12-1-99; 16.2.3.13 NMAC - Rn & A, 16 NMAC 2.3.13, 5-20-00; 16.2.3.11 NMAC - Rn, 16.2.3.13 NMAC, 7-27-01; A, 7-27-01; A, 02-15-05; A, 11-28-09]

16.2.3.13 SUFFICIENCY OF DOCUMENT: The board shall determine the sufficiency of the documentation that supports the application for licensure. The board may, at its discretion, request further proof of qualifications or require a personal interview with any applicant to establish his or her qualifications. If requested by the board, all further proof of qualifications shall be received at the board office at least [thirty five (35)] 35 days before the clinical skills examination date. Any required personal interview will be scheduled as determined by the board.

[11-3-81...7-1-96; 2-17-00; 16.2.3.15 NMAC - Rn & A, 16 NMAC 2.3.15, 5-20-00; 16.2.3.13 NMAC - Rn, 16.2.3.15 NMAC, 7-27-01; A, 7-27-01; A, 3-2-03; A, 11-28-09]

16.2.3.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE: All documentation required for licensure shall be received at the board office no later than [twelve (12)] 12 months after the initial application is received at the board office. [11-3-81...7-1-96; 4-1-97, 5-15-99; 16.2.3.16 NMAC - Rn & A, 16 NMAC 2.3.16, 5-20-00; 16.2.3.14 NMAC - Rn, 16.2.3.16 NMAC, 7-27-01; A, 7-27-01; A, 11-28-09]

16.2.3.15 NOTIFICATION OF LICENSURE: The applicant shall be notified of approval or denial of his [or her] completed application requirements including examination requirements by mail postmarked no more than [twenty-one (21)] 21 days from the board's receipt of all required documentation. The board shall issue a license to all applicants who have met the requirements of 16.2.3 NMAC and 16.2.4 NMAC [(Part 3 and Part 4 of the rules)].

[11-3-81...7-1-96; 4-1-97, 5-15-99; 16.2.3.17 NMAC - Rn & A, 16 NMAC 2.3.17, 5-20-00; 16.2.3.15 NMAC - Rn, 16.2.3.17 NMAC, 7-27-01; A, 7-27-01; A, 11-28-09]

16.2.3.16 EXPIRATION AND ABANDONMENT OF APPLICATION: If all application requirements have not been met within [twelve (12)] 24 months of the initial application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the application is abandoned and the applicant wants to reapply for licensure, the applicant shall be required to submit the completed current application form, pay the current application fee and satisfy the requirements for licensure then in effect at the time of the new application. The board shall notify the applicant of pending abandonment of the application for licensure by mail postmarked at least [sixty (60)] 60 days before the date of abandonment which is the expiration of the [twelve (12)] 24 month deadline for completing all requirements for licensure. The board shall notify the applicant of abandonment of the application by mail postmarked no more than [twenty-one (21)] 21 days after the date of abandonment.

[11-3-81...7-1-96; 2-17-00; 16.2.3.18 NMAC - Rn & A, 16 NMAC 2.3.18, 5-20-00; 16.2.3.16 NMAC - Rn, 16.2.3.18 NMAC, 7-27-01; A, 7-27-01; A, 02-15-05; A, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.4 NMAC Sections 8, 10, 11, 12, 13, 14, 16, 17, 18 and 19 effective 11/28/09.

16.2.4.8 APPROVED EXAMINATIONS: The board approved examinations shall consist of a written examination portion and a practical examination portion.

A. The written examinations approved by the board shall be:

(1) the national certification

commission for acupuncture and oriental medicine foundations of oriental medicine module; [and]

(2) the national certification commission for acupuncture and oriental medicine acupuncture module; [and]

(3) the national certification commission for acupuncture and oriental medicine Chinese herbology module; [and]

(4) the national certification commission for acupuncture and oriental medicine biomedicine module; [and]

(5) the national certification commission for acupuncture and oriental medicine approved clean needle technique course; and

(6) the board approved and board administered jurisprudence examination covering the act and the rules.

B. The practical examinations approved by the board shall be:

(1) the national certification commission for acupuncture and oriental medicine point location module; and

(2) the clinical skills examination; the clinical skills examination includes examination in acupuncture, herbal medicine and biomedicine competencies.

C. The board may adopt such other examinations as may be necessary for psychometric evaluation of its approved examinations.

[11-3-81...7-1-96; 4-1-97, 8-31-98, 5-15-99, 7-3-99; 16.2.4.8 NMAC - Rn & A, 16 NMAC 2.4.8, 5-20-00; A, 7-26-01; A, 02-15-05; A, 11-28-09]

16.2.4.10 EXAMINATION REQUIREMENTS FOR LICENSURE: The following shall be the examination requirements for licensure. All fees for nationally recognized examinations shall be paid by the applicant and are not included in fees charged by the board.

A. Achievement of a passing score as determined by the national certification commission for acupuncture and oriental medicine (NCCAOM) on each of the following:

(1) the NCCAOM foundations of oriental medicine module; [and]

(2) the NCCAOM acupuncture module; [and]

(3) the NCCAOM Chinese herbology module; [and]

(4) the NCCAOM biomedicine module; and

(5) the NCCAOM point location module.

B. Achievement of a passing score of at least [seventy-five percent (75%)] 75 percent on the clinical skills examination. To determine a passing score when the applicant is examined by more than one [(1)] examiner, if the applicant is examined by two [(2)] examiners, the

applicant must receive a score of at least [~~seventy-five percent (75%)~~] 75 percent after both scores are averaged and if the applicant is examined by three [~~(3)~~] examiners, the applicant must receive a score of at least [~~seventy-five percent (75%)~~] 75 percent from a majority of the examiners.

C. Successful completion of the national certification commission for acupuncture and oriental medicine approved clean needle technique course.

D. Achievement of a passing score of not less than [~~one hundred percent (100%)~~] 90 percent on the board approved and board administered jurisprudence examination covering the act and the rules.

E. Applicants who completed the national certification commission for acupuncture and oriental medicine (NCCAOM) examinations in acupuncture and Chinese herbology prior to June 2004 are not required to pass the NCCAOM foundations of oriental medicine module.

[11-3-81...7-1-96; 4-1-97, 8-31-98, 5-15-99; 16.2.4.10 NMAC - Rn, 16 NMAC 2.4.10, 5-20-00; A, 7-26-01; A, 02-15-05; A, 11-28-09]

16.2.4.11 CLINICAL SKILLS EXAMINATION FREQUENCY AND DEADLINES:

The board shall hold a clinical skills examination at least once each year provided that applications for licensure are pending. The initial application specified in 16.2.3.11 NMAC [~~(Section 11 of Part 3 of the rules)~~] shall be received at the board office at least [~~sixty (60)~~] 60 calendar days before the next scheduled clinical skills examination date. The board shall send a written response to the applicant informing the applicant of the application's completeness or needed documentation postmarked at least [~~forty-five (45)~~] 45 calendar days before the next scheduled clinical skills examination date. All documentation required to complete the initial application for licensure shall be received at the board office at least [~~thirty-five (35)~~] 35 calendar days before the next scheduled clinical skills examination date. If the application requirements are received at the board office after a deadline, the application will be held and not processed until the deadline schedule for the next subsequent clinical skills examination. The applicant shall be notified of approval or denial of his or her completed initial application for licensure specified in 16.2.3.11 [~~(Section 11 of Part 3 of the rules)~~], by mail postmarked at least [~~twenty-five (25)~~] 25 calendar days prior to the next scheduled clinical skills examination date.

[11-3-81...7-1-96; 16.2.4.11 NMAC - Rn, 16 NMAC 2.4.11, 5-20-00; A, 7-26-01; A, 03-02-03; A, 11-28-09]

16.2.4.12 CLINICAL SKILLS EXAMINATION CONFIRMATION:

The board approved confirmation card, provided to the applicant, shall be mailed to the applicant upon receipt of the clinical skills examination fee specified in 16.2.10 NMAC [~~(Part 10 of the rules)~~]. Confirmation of clinical exam passage will be valid for 24 months. After 24 months has passed, the applicant will have to retake the clinical exam and reapply as a new applicant.

[16.2.12 NMAC - N, 7-26-01; A, 03-02-03; A, 11-28-09]

16.2.4.13 PAYMENT OF CLINICAL SKILLS EXAMINATION FEE:

The non refundable clinical skills examination fee specified in 16.2.10 NMAC (Part 10 of the rules) shall be paid by certified check or money order in U.S. funds and received in the board's office at least [~~fifteen (15)~~] 15 calendar days prior to the next scheduled clinical skills examination.

[11-3-81...7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.12 NMAC - Rn & A, 16 NMAC 2.4.12, 5-20-00; 16.2.4.13 NMAC - Rn, 16.2.4.12 NMAC, 7-26-01; A, 7-26-01; A, 03-02-03; A, 11-28-09]

16.2.4.14 CLINICAL SKILLS EXAMINATION COMMITMENT:

Upon receipt of the clinical skills examination fee for the next scheduled clinical skills examination, the applicant shall sit for the exam or forfeit the fee. The non-refundable clinical skills examination fee may be applied to a subsequent exam only as provided in Section 15 of 16.2.4 NMAC [~~(Part 4 of the rules)~~].

[11-3-81...7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.13 NMAC - Rn, 16 NMAC 2.4.13, 5-20-00; 16.2.4.14 NMAC - Rn, 16.2.4.13 NMAC, 7-26-01; A, 7-26-01; A, 03-02-03; A, 11-28-09]

16.2.4.16 FAILING SCORE:

In the event that an applicant fails to achieve a passing score on the clinical skills examination, he [~~or she~~] may apply as provided in 16.2.4.17 NMAC [~~(Section 17 of Part 4 below)~~], and must pay the required fees.

[11-3-81...7-1-96; 4-1-97; Rn, 16 NMAC 2.4.12, 8-31-98, 5-15-99; 2-17-00; 16.2.4.15 NMAC - Rn, 16 NMAC 2.4.15, 5-20-00; 16.2.4.16 NMAC - Rn, 16.2.4.15 NMAC, 7-26-01; A, 7-26-01; A, 11-28-09]

16.2.4.17 RE-EXAMINATION:

Applicants who have failed the clinical skills examination may apply to take the next subsequent clinical skills examination. The applicant shall notify the board of his [~~or her~~] commitment to take the next subsequent clinical skills examination with a written and signed letter received at the board office at least [~~sixty (60)~~] 60 days

before the next clinical skills examination date. The applicant shall then be notified by the board of his [~~or her~~] acceptance to take the next clinical skills examination by mail postmarked at least [~~forty-five (45)~~] 45 days prior to the next scheduled clinical skills examination date. The applicant shall pay the clinical skills examination fee in accordance with the provisions of [~~16.2.4.3 NMAC (Section 13 of Part 4)~~] 16.2.4.13 NMAC. If the applicant does not pass the next scheduled clinical skills examination, the applicant shall file a new application on the current form provided by the board, pay all the required fees, and satisfy all current requirements in effect at the time the application is made. If the applicant passes the exam, but does not complete license application within 24 months, the applicant will have to reapply as an initial applicant.

[7-1-96; 4-1-97; Rn, 16 NMAC 2.4.13, 8-31-98, 5-15-99, 2-17-00; 16.2.4.16 NMAC - Rn, 16 NMAC 2.4.16, 5-20-00; A, 10-22-00; 16.2.4.17 NMAC - Rn, 16.2.4.16 NMAC, 7-26-01; A, 7-26-01; A, 11-28-09]

16.2.4.18 EXAMINERS:

The board shall select a group of doctors of oriental medicine to act as examiners for the clinical skills examination. These examiners shall have had five [~~(5)~~] years of clinical experience at the time they are selected. The board or its designated agent shall train these examiners to judge applicants taking the board approved clinical skills examination in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.

[Rn, 16 NMAC 2.4.16, 8-31-98; A, 8-31-98; 16.2.4.19 NMAC - Rn, & A, 16 NMAC 2.4.19, 5-20-00; 16.2.4.18 NMAC - Rn, 16.2.4.19 NMAC, 7-26-01; A, 7-26-01; A, 11-28-09]

16.2.4.19 REVIEW OF CLINICAL SKILLS EXAMINATION SCORE:

Applicants may request review of their clinical skills examination results by the board or its examination committee for significant procedural or computational error if such review request is received in writing at the board office within [~~thirty (30)~~] 30 calendar days of notification to the applicant of the clinical skills examination results.

[Rn, 16 NMAC 2.4.17, 8-31-98, 5-15-99; 16.2.4.20 NMAC - Rn & A, 16 NMAC 2.4.20, 5-20-00; 16.2.4.19 NMAC - Rn, 16.2.4.20 NMAC, 7-26-01; A, 7-26-01; A, 02-15-05; A, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.8 NMAC Sections 2, 3, 7, 8, 10, 11 and 12 and the repeal of Section 13 effective 11/28/09.

16.2.8.2 SCOPE: All licensed doctors of oriental medicine and all licensed doctors of oriental medicine certified for expanded practice.

[16.2.8.2 NMAC - Rp, 16.2.8.2 NMAC, 02-15-05; A, 11-28-09]

16.2.8.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 8.1, 9 and 15, NMSA 1978.

[16.2.8.3 NMAC - Rp, 16.2.8.3 NMAC, 02-15-05 ; A, 11-28-09]

16.2.8.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC [~~(Section 7 of Part 1 of the rules)~~].

[16.2.8.7 NMAC - Rp, 16.2.8.7 NMAC, 02-15-05; A, 11-28-09]

16.2.8.8 LICENSE RENEWAL GENERAL REQUIREMENTS:

A. Except as provided otherwise in the act, or in these rules, or pursuant to other state law, including but not limited to the board's right to deny an application for renewal pursuant to Section 61-14A-17 NMSA 1978, and the Parental Responsibility Act, NMSA 1978, Section 40-5A-1, et seq., each licensed doctor of oriental medicine shall be granted renewal of his [or her] license for one year upon receipt and approval by the board or its designee of completion of the following requirements.

B. Any applicant for license renewal who is licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act, shall provide an affidavit regarding the disciplinary record of the applicant since last renewing his or her license with the board.

C. Any applicant for license renewal who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC [~~(Part 8 of the rules)~~], may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-

2-1, et seq.

D. Any applicant for license renewal who provides the board with false information or makes a false statement to the board may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[16.2.8.8 NMAC - Rp, 16.2.8.8 NMAC, 02-15-05; A, 11-28-09]

16.2.8.10 ANNUAL LICENSE RENEWAL APPLICATION:

Upon approval of an application for license renewal that fulfills the requirements listed below, the board shall renew the license. The application requirements for license renewal shall be receipt of the following documentation by the board:

A. the license renewal fee specified in 16.2.10 NMAC [~~(Part 10 of the rules)~~] paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process;

B. an license renewal application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

C. an affidavit as provided on the "annual license renewal form" as to whether the applicant since receiving or last renewing (whichever is more recent) his [or her] license with the board:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; [or]

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; [or]

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or as provided on the "annual license renewal form";

(4) is in arrears on a court-ordered

child support payment; or

(5) has violated any provision of the act or the rules; and

D. an affidavit as provided on the "annual license renewal form" regarding the applicant's license history since last renewing his [~~or her~~] license with the board stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; [and]

E. an affidavit as provided on the "annual license renewal form" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC [~~(Subsection 10-C of Part 8 of the rules)~~] may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; [and]

F. an affidavit as provided on the "annual license renewal form" stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; [and]

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within [~~ten (10)~~] 10 days if the applicant's address changes; and

G. if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits;

H. an accurate translation in English of all documents submitted in a

foreign language; each translated document shall bear the affidavit of the translator certifying that he [or she] is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

I. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC [(Section 8 of Part 9 of the rules)]; doctors of oriental medicine certified for the expanded [or extended prescriptive authority] practice shall submit satisfactory proof, as determined by the board, of completion of any expanded [or extended prescriptive authority] practice continuing education requirements established by the board in 16.2.9.9 NMAC [(Section 9 of Part 9 of the rules)].

[16.2.8.10 NMAC - Rp, 16.2.8.10 NMAC, 02-15-05; A, 11-28-09]

16.2.8.11 LATE LICENSE RENEWAL:

A. For a licensee whose late application to renew his or her license is received at the board office during the [sixty (60)] 60 day grace period provided by Section 61-14A-15 NMSA 1978, the license shall be renewed if the applicant for late license renewal completes the requirements of 16.2.8.10 NMAC [(Section 10 of Part 8 of the rules)] and pays the fee for late license renewal specified in 16.2.10 NMAC [(Part 10 of the rules)].

B. With regard to continuing education, if the required correct score on the open book jurisprudence examination [(Subsection 8.C of Part 9 of the rules)] required by Subsection D of 16.2.9.8 NMAC is not attained, the applicant will be required to resubmit the open book jurisprudence exam and the license shall not be renewed until the required score is achieved. If the jurisprudence examination with the required correct score is received at the board office during the [sixty (60)] 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

C. If proof of NCCAOM recertification or equivalent continuing education as defined in 16.2.9.8 NMAC [(Section 8 of Part 9 of the rules)] is received at the board office during the [sixty (60)] 60 day grace period, the renewal shall be considered a late license renewal and the

applicant must pay the fee for late license renewal prior to license renewal.

D. For doctors of oriental medicine certified for [the expanded or extended prescriptive authority] expanded practice, if proof of expanded [or extended prescriptive authority] practice continuing education as defined in 16.2.9.9 NMAC [(Section 9 of Part 9 of the rules)] is received at the board office during the [sixty (60)] 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

[16.2.8.11 NMAC - Rp, 16.2.8.11 NMAC, 02-15-05; A, 11-28-09]

16.2.8.12 EXPIRED LICENSE:

[A.] If a licensee has not renewed his [or her] license, including all continuing education requirements specified in 16.2.9.8 NMAC [(Section 8 of Part 9 of the rules)] within the [sixty (60)] 60 day grace period provided by Section 61-14A-15 NMSA 1978, the license is expired and that licensee shall not practice oriental medicine until their expired license is renewed. For an expired license, if a properly completed application for license renewal is received at the board office within one year of the last regular renewal date, the license shall be renewed if all the requirements of late license renewal during the [sixty] 60 day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC [(Section 11 of Part 8 of the rules)], and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC [(Part 10 of the rules)]. For each licensee whose license has expired, the board shall notify the licensee by return receipt mail sent to the address on record that the license has expired and shall notify the licensee that he [or she] must not practice oriental medicine until the license is renewed. This notification shall also contain an explanation of the procedures and fees for renewing the license and the consequences of not renewing the license. The board is responsible for sending the notification by return receipt mail in a timely manner to the address on record for the licensee and for maintaining a record of all such notifications sent including the return receipt documents. The board is not responsible for verifying that the return receipt was returned by the post office to the board, for further follow up to verify that the notification was received or to locate and notify a licensee who has changed address without properly notifying the board of the new address. The licensee is responsible for notifying the board of the correct current address and of any address changes. Any former licensee, after being properly notified as described above, who fails to renew his or her expired license by the next July 31 annual license renewal date after the notification shall be required to

apply as a new applicant [except that there shall be a limited licensure reinstatement period as defined in 16.2.8.13 NMAC (Section 13 of Part 8 of the rules)].

[16.2.8.12 NMAC - Rp, 16.2.8.12 NMAC, 02-15-05; A, 9-25-06; A, 11-28-09]

[B.] 16.2.8.13 EXPANDED PRACTICE CERTIFICATION RENEWAL:

A. If a doctor of oriental medicine certified for expanded [or extended] prescriptive authority does not complete all expanded [(Rx2) or extended] prescriptive authority [(Rx1)] continuing education requirements specified in 16.2.9.9 NMAC [(Section 9 of Part 9 of the rules)] within the [sixty (60)] 60 day grace period, the expanded [or extended] prescriptive authority certification(s) is expired and that licensee shall not be certified for expanded [or extended] prescriptive authority until the continuing education is completed. Provided that all other renewal requirements have been received by the board, such a licensee shall continue to be licensed as a doctor of oriental medicine and is authorized for that scope of practice but shall not be authorized for the relevant expanded [or extended] prescriptive authority scope of practice. For an expired expanded [or extended] prescriptive authority certification, if a properly completed application for [license] certification renewal, including proof of completion of the required expanded [or extended] prescriptive authority continuing education, is received at the board office within one year of the last regular renewal date, the expanded [or extended] prescriptive authority certification or certifications shall be renewed if all the requirements of late [license] certification renewal during the [sixty] 60 day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC [(Section 11 of Part 8 of the rules)], and the licensee also pays the fee for expired [license] certification renewal specified in 16.2.10 NMAC [(Part 10 of the rules)]. For each licensee whose expanded [or extended] prescriptive authority certification has expired, the board shall notify the licensee by return receipt mail sent to the address on record that the expanded [(Rx2) or extended (Rx1)] prescriptive authority certification or certifications has expired and shall notify the licensee that he or she must not practice those areas authorized by the expanded [(Rx2) or extended (Rx1)] prescriptive authority certification until the [expanded (Rx2) or extended (Rx1)] prescriptive authority certification is renewed. This notification shall also contain an explanation of the procedures and fees for renewing the expanded [(Rx1) or extended (Rx2)] prescriptive authority certification and the consequences of not

renewing the expanded [(Rx1) or extended (Rx2)] prescriptive authority. The board is responsible for sending the notification by return receipt mail in a timely manner to the address on record for the licensee and for maintaining a record of all such notifications sent, including the return receipt documents. The board is not responsible for verifying that the return receipt was returned by the post office to the board, for further follow up to verify that the notification was received or to locate and notify a licensee who has changed address without properly notifying the board of the new address. The licensee is responsible for notifying the board of the correct current address and of any address changes. Any licensee, after being properly notified as described above, who fails to renew, including completion of any required continuing education, his or her expired expanded [(Rx2) or extended (Rx1)] prescriptive authority certification by the next July 31 annual license renewal date after the notification shall be required to apply as a new applicant for expanded [or extended] prescriptive authority certification except that there shall be a limited expanded [(Rx1) or extended (Rx2)] prescriptive authority certification reinstatement period as defined in 16.2.8.13 NMAC [(Section 13 of Part 8 of the rules)].

[C] B. The board may, on an individual basis, renew a license that has expired for more than one year if the former licensee can demonstrate good cause as defined in 16.2.1.7 NMAC [(Section 7 of Part 1 of the rules)].

[D] C. The board shall report to the New Mexico board of pharmacy any expired license that was previously held by a doctor of oriental medicine who was certified for the expanded prescriptive authority [(Rx2) or the extended] prescriptive authority [(Rx1)] and shall report to the New Mexico board of pharmacy any renewed or reinstated license of a doctor of oriental medicine who is certified for the expanded prescriptive authority [(Rx2) or the extended] prescriptive authority [(Rx1)].

~~16.2.8.13 LIMITED REINSTATEMENT OF AN EXPIRED LICENSE:~~

~~A. There shall be a limited reinstatement period effective immediately and until July 31, 2007 for any licensee whose license expired after July 31, 2001 and was not renewed, whereby such a licensee may reinstate his or her license by submitting the following to the board on or before July 31, 2007:~~

~~(1) the requirements of 16.2.8.10 NMAC (Section 10 of Part 8 of the rules); and~~

~~(2) payment of the fee for late license renewal specified in 16.2.10 NMAC (Part 10 of the rules); and~~

~~(3) payment of the fee for expired license renewal specified in 16.2.10 NMAC (Part 10 of the rules); and~~

~~(4) payment of the license renewal fee specified in 16.2.10 NMAC (Part 10 of the rules) for each and every past year that the license was not in effect; and~~

~~(5) satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules) and, if appropriate, 16.2.9.9 NMAC (Section 9 of Part 9 of the rules) for all past years that the license was expired and for which continuing education was required.~~

~~B. A former licensee who was certified for the expanded prescriptive authority (Rx2) or extended prescriptive authority (Rx1) and whose license has expired shall have that certification reinstated along with his or her license reinstatement if he or she provides satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.9 NMAC (Section 9 of Part 9 of the rules) for all past years that the license was not in effect and for which continuing education was required, along with all requirements for license reinstatement defined in this section 16.2.8.13 NMAC (Section 13 of Part 8 of the rules):~~

~~C. A former licensee whose license has expired is prohibited from practicing acupuncture and oriental medicine in New Mexico during the period his or her license was expired and may only resume practice if and when the reinstated license is received by the former licensee from the board:~~

~~D. Nothing in this section 16.2.8.13 NMAC (Section 13 of Part 8 of the rules) shall preclude the board from initiating an investigation or disciplinary action based on alleged misconduct or violations of the act or rules pursuant to the provisions of the act, the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq and 16.2.12 NMAC (Part 12 of the rules) against a former licensee for actions during the period that the former licensee's license was expired. Any former licensee who applies for reinstatement under the provisions of 16.2.8.13 NMAC (Section 13 of Part 8 of the rules) agrees to waive the statute of limitations of Section 16-1-3.1(A) NMSA 1978 and consents to board jurisdiction over any behavior or conduct that occurred during the period the license was expired. The board may deny an application for reinstatement based on any conduct occurring during the period the license was expired and two years immediately preceding the date of expiration, without regard to the limitations on actions:~~

~~E. The provisions of~~

~~16.2.8.13 NMAC shall not apply to any former licensee who has an active complaint pending before the board, is under investigation or is facing disciplinary proceedings by the board or has had a disciplinary action taken against his or her license by any jurisdiction while his or her license was expired:~~

~~F. An applicant for license reinstatement whose application for license reinstatement has been denied shall be given an opportunity for a hearing pursuant to the provisions of the act and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq:~~

~~G. The board shall notify all previous licensees whose licenses expired and who fall within the time parameters defined in this section 16.2.8.13 NMAC (Section 13 of Part 8 of the rules) by return receipt mail sent to the last address on record of the limited license reinstatement period with an explanation of the requirements and instructions for requesting an application. The board shall also post a notice of the limited license reinstatement period in the newsletter of the state professional association and a national monthly acupuncture and oriental medicine newsmagazine:~~

~~H. The board authorizes only one limited license reinstatement period. Any former licensee, whose license has expired, and who fails to reinstate his or her expired license by July 31, 2007 shall be required to apply as a new applicant.]~~

~~[16.2.8.13 NMAC - N, 9-25-06; Repealed, 11-28-09; 16.2.8.13 NMAC - Rn, 16.2.8.12 Subsections B, C & D & A, 11-28-09]~~

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.9 NMAC Sections 2, 3, 6, 8 and 9 effective 11/28/09.

16.2.9.2 SCOPE: All licensed doctors of oriental medicine and all licensed doctors of oriental medicine certified for expanded practice as defined in 16.2.19 NMAC.

[16.2.9.2 NMAC - Rp 16 NMAC 2.9.2, 12-1-01; A, 11-28-09]

16.2.9.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 8.1, 9, and 15, NMSA 1978.

[16.2.9.3 NMAC - Rp 16 NMAC 2.9.3, 12-1-01; A, 11-28-09]

16.2.9.6 OBJECTIVE: This part defines continuing education

requirements for doctors of oriental medicine and all licensed doctors of oriental medicine certified for expanded practice as defined in 16.2.19 NMAC.

[16.2.9.6 NMAC - Rp 16 NMAC 2.9.6, 12-1-01; A, 3-7-03; A, 11-28-09]

16.2.9.8 CONTINUING EDUCATION:

A. A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

(1) proof of continuing NCCAOM recertification in oriental medicine, acupuncture or Chinese herbology; or

(2) proof of completion of 15 hours annually, or every four years, of 60 hours of NCCAOM approved continuing education courses.

B. A doctor of oriental medicine who is a board approved examiner, examiner supervisor, or examiner trainer, for the clinical skills examination shall be granted continuing education credit for a licensed D.O.M. in oriental medicine, for time spent functioning as an examiner or training to be an examiner. This also applies to an observing board member if they have completed the training. Limited to six hours per year.

[B] C. The board shall annually audit a random [ten (10)] 10 percent of continuing education documentation to determine the validity of the documentation.

[C] D. A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[D] E. A doctor of oriental medicine shall maintain an understanding of the current act and rules and shall complete, with a score of [100] 90 percent correct answers, an open book jurisprudence examination covering the act and the rules that contains at least [ten (10)] 10 questions and shall submit this to the board at the time of license renewal.

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12-1-01; A, 10-1-03; A, 02-15-05; A, 9-25-06; A, 11-28-09]

16.2.9.9 [CONTINUING EDUCATION FOR EXTENDED OR EXPANDED PRESCRIPTIVE AUTHORITY CERTIFIED LICENSEES] CONTINUING EDUCATION FOR LICENSEES CERTIFIED FOR

EXPANDED PRACTICE:

A. A doctor of oriental medicine certified for [the extended prescriptive authority or the expanded prescriptive authority] expanded practice in one or more areas as defined in 16.2.19 NMAC shall complete [seven (7) hours of continuing education each year prior to renewal of his or her license in addition to any continuing education required for license renewal specified in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules). The continuing education shall be about new substances or updated information about current substances in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules) and in improving current techniques or new or advanced techniques that are part of the extended or expanded prescriptive authority certification. Continuing education courses, including teachers, shall be approved by the board. Continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements. The board may determine specific mandatory courses that must be completed. Specific mandatory courses shall be noticed at least six (6) months prior to the date of the course. Exceptions to being required to complete a specific mandatory course may be made for good cause.] 14 hours of continuing education every two years in addition to any continuing education required for license renewal specified in 16.2.9.8 NMAC. The initial reporting period will begin August 1, 2009 and the 14 hours for recertification shall be completed prior to July 31, 2011 and each two years thereafter. License holders who are newly certified for expanded practice will be required to complete up to 14 hours of continuing education on a prorated basis during the first year(s) of recertification and then each two years thereafter.

B. The continuing education shall be about substances in the board approved appropriate expanded practice formulary or formularies defined in 16.2.20 NMAC or updated information in improving current techniques or new and advanced techniques that are part of the expanded practice certification as defined in 16.2.19 NMAC.

C. Continuing education courses, including teachers, shall be approved by the board:

(1) course providers requesting approval for Rx continuing education certification shall be required to submit the following materials to the board for approval no less than 45 days prior to the date of the course offering and the materials shall include:

(a) a \$ 50 application fee;

(b) course description, including objectives, subject matter, number of hours,

date time and location; and

(c) curriculum vitae of the instructor(s) including previous teaching experience in subjects they are engaged to teach of at least five years;

(2) practitioners requesting approval for a specific course for their own personal continuing education shall submit a copy of the course brochure including a course description, subject matter, contact hours, and curriculum vitae of the instructor 45 days prior to the course offering;

(3) the continuing education committee shall meet each month on or before the 15th to review course materials; electronic review is acceptable;

(4) a doctor of oriental medicine certified for expanded practice in basic injection, injection or intravenous therapies must remain current in basic life support, BLS, and CPR with proof of having completed an American heart association approved course; a current copy of this card shall be submitted to the board at the time of each biennial expanded practice certification renewal.

D. Teaching an approved continuing education course shall be equivalent to taking the approved course. Continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements for expanded practice continuing education. The board may determine specific mandatory courses that must be completed. Specific mandatory courses shall be noticed at least six months prior to the date of the course. Exceptions to being required to complete a specific mandatory course may be made for good cause.

[16.2.9.9 NMAC - N, 10-1-03; A, 02-15-05; A, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.10 NMAC Sections 2, 7 and 9 effective 11/28/09.

16.2.10.2 SCOPE: All licensees, applicants, applicants for expanded practice certification, educational courses, temporary licensees, applicants for temporary licensure, limited temporary license holders, limited temporary license applicants, extern applicants, externship supervisor applicants, certified auricular detoxification specialists, certified auricular detoxification specialist applicants, auricular detoxification specialist training programs, auricular detoxification specialist training program applicants, educational programs and applicants for approval of educational programs.

[7-1-96; 16.2.10.2 NMAC - Rn, 16 NMAC

2.10.2, 10-22-00; A, 1-1-01; A, 8-13-01; A, 02-15-05; A, 11-28-09]

16.2.10.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC [~~Section 7 of Part 1 of the rules~~].

[7-1-96; 16.2.10.7 NMAC - Rn, 16 NMAC 2.10.7, 10-22-00; A, 02-15-05; A, 11-28-09]

16.2.10.9 FEES CHARGED:

A. All fees shall be paid by check, certified check or money order in US funds unless otherwise specified by rule.

B. No fees paid to the board shall be refunded.

C. The board shall charge the following fees:

(1) application for licensure: \$525.00;

(2) application for reciprocal licensure: \$750.00;

(3) application for licensure by endorsement: \$800.00;

(4) application for temporary licensure: \$330.00;

(5) application for limited temporary license: \$100.00;

(6) clinical skills examination, not including the cost of any nationally recognized examinations: \$500.00;

(7) annual license renewal: \$225.00;

(8) late license renewal: an additional \$200.00;

(9) expired license renewal: [~~\$300.00~~] an additional \$350.00 plus the renewal and late fees;

(10) temporary license renewal: \$100.00;

(11) application for a new annual approval or renewal of approval of an educational program, including the same program offered at multiple campuses: \$450.00;

(12) late renewal of approval of an educational program: an additional \$225.00;

(13) application for single instance approval of an educational program: \$225.00

(14) application for [~~extended prescriptive authority~~] initial expanded practice certification: [~~\$125.00~~] \$100.00 per module;

(15) application for biennial expanded practice certification renewal: an additional \$200;

[~~(15) application for expanded prescriptive authority certification: \$125.00;~~]

(16) late expanded practice certification renewal: an additional \$125.00 plus the renewal fee;

(17) expired expanded practice certification renewal: an additional \$100.00 plus the renewal and late fees;

[~~(16)~~] (18) application for externship supervisor registration: \$225.00;

[~~(17)~~] (19) application for extern certification: \$225.00;

[~~(18)~~] (20) continuing education provider course approval application: \$50.00;

[~~(19)~~] (21) auricular detoxification specialist certification application: \$50.00;

[~~(20)~~] (22) auricular detoxification specialist certification renewal: \$30.00;

[~~(21)~~] (23) auricular detoxification specialist certification late renewal: \$20.00;

[~~(22)~~] (24) auricular detoxification specialist supervisor registration application: \$50.00;

[~~(23)~~] ~~auricular detoxification specialist supervisor registration renewal: \$30.00;~~

[~~(24)~~] ~~auricular detoxification specialist supervisor registration late renewal: \$20.00;~~

(25) auricular detoxification specialist training program approval application: \$100.00;

(26) auricular detoxification specialist training program approval renewal: \$50.00;

(27) treatment program approval application: \$100.00;

(28) administrative fee for application for approval of [~~extended or expanded prescriptive authority course: \$200.00~~] an expanded practice educational program: \$600.00;

(29) renewal of [~~extended or~~] expanded prescriptive authority course: \$200.00;

(30) administrative fee for inactive license application: \$125.00;

(31) administrative fee for inactive license renewal: \$100.00;

(32) administrative fee for inactive license reinstatement application: \$125.00;

(33) administrative fee for each duplicate license: \$30.00;

(34) administrative fee for a single transcript or diploma from the former international institute of Chinese medicine, per copy: \$50.00;

(35) administrative fees to cover the cost of photocopying, electronic data, lists and labels produced at the board office.

[11-3-81...7-1-96; A, 5-15-99; A, 2-17-00; 16.2.10.9 NMAC - Rn, 16 NMAC 2.10.10, 10-22-00; A, 1-1-01; A, 8-13-01; A, 3-2-03; A, 02-15-05; A, 9-25-06; A, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.11 NMAC Sections 7, 9, 10 and 12 effective 11/28/09.

16.2.11.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC [~~Section 7 of Part 1 of the rules~~].

[16.2.11.7 NMAC - Rp 16 NMAC 2.11.7, 12-1-01; A, 02-15-05; A, 11-28-09]

16.2.11.9 RECORDS: A doctor of oriental medicine, temporary licensee, extern or educational program shall keep accurate records of each patient including the diagnosis and nature of treatment given and any other relevant data deemed necessary by the provider. Records shall be retained for a minimum of [~~five (5)~~] 10 years or in accordance with federal regulation and shall be open to inspection at any time during normal business hours by the board.

[16.2.11.9 NMAC - Rp 16 NMAC 2.11.9, 12-1-01; A, 11-28-09]

16.2.11.10 USE OF BUSINESS NAME OR TRADE NAME:

The board shall be notified of the use of a trade or business name or "DBA" by a doctor of oriental medicine. The board shall be notified, in writing, of any change of business or trade name within [~~ten (10)~~] 10 days of the change.

[16.2.11.10 NMAC - Rp 16 NMAC 2.11.10, 12-1-01; A, 02-15-05; A, 11-28-09]

16.2.11.12 C H A N G E S , RELOCATION, CLOSING:

Within [~~ten (10)~~] 10 days of any changes, a doctor of oriental medicine or temporary licensee shall inform the board, in writing, of any changes to his or her practice, including relocation, abandonment and closing for over 90 days. Notice to the board shall include at a minimum the name of the licensee, office location, mailing address, telephone number, business name and the names of all licensees practicing at that location.

[16.2.11.12 NMAC - Rp 16 NMAC 2.11.12, 12-1-01; A, 02-15-05; A, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.12 NMAC Sections 7, 8, 14, 16, 17, 30, 32, 35 and 36 effective 11/28/09.

16.2.12.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC [~~Section 7 of Part 1 of the rules~~].

[7-1-96; 16.2.12.7 NMAC - Rn, 16 NMAC 2.12.7, 8-13-01; A, 02-15-05; A, 11-28-09]

16.2.12.8 AUTHORITY AND PROCEDURE:

The board may refuse to issue, or may suspend, or revoke any license, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in the Act and clarified in 16.2.12 NMAC [~~Part 12 of the Rules~~].

[3-19-91...7-1-96; 16.2.12.8 NMAC - Rn & A, 16 NMAC 2.12.8, 8-13-01; A, 11-28-09]

16.2.12.14 P R O C U R I N G LICENSE BY FRAUD: Pursuant to the

Act, Section 61-14A-17.A (1), NMSA 1978, a doctor of oriental medicine, an applicant, a temporary licensee, an applicant for temporary licensure or an extern shall be guilty of fraud or deceit in procuring or attempting to procure or renew a license or a temporary license to practice in the profession of acupuncture and oriental medicine if he [or she] makes false statements, or provides false or misleading information on his or her application.

[4-11-89...7-1-96; 16.2.12.14 NMAC - Rn & A, 16 NMAC 2.12.14, 8-13-01; A, 11-28-09]

16.2.12.16 F A L S E ADVERTISING: Pursuant to the Act, Section 61-14A-17.A (13) NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, instructor in an educational course or program or applicant for approval of an educational program shall be guilty of advertising by means of knowingly false statements who makes or publishes or causes to be made or published any advertisement, offer, statement or other form of representation, oral or written, that directly or by implication is false, misleading or deceptive.

[11-3-81...7-1-96; 16.2.12.16 NMAC - Rn & A, 16 NMAC 2.12.16, 8-13-01; A, 11-28-09]

16.2.12.17 F A L S E ADVERTISING BY APPLICANTS: Pursuant to the Act, Sections 61-14A-17.A (7) and (13) NMSA 1978, an applicant or an applicant for temporary licensure shall be guilty of violating the provisions of the act, specifically Section 61-14A-4, and shall be guilty of advertising by means of knowingly false statements who advertises his or her practice of acupuncture and oriental medicine if he [or she] does such advertising prior to being licensed by the board.

[4-1-97; 16.2.12.7 NMAC - Rn, 16 NMAC 2.12.7, 8-13-01; A, 11-28-09]

16.2.12.30 PERMITTING THE PRESCRIPTION OF SUBSTANCES AND PROCEDURES: Pursuant to the Act, Section 61-14A-17.A (5) NMSA 1978, a doctor of oriental medicine, applicant, temporary licensee, applicant for temporary licensure or extern shall be guilty of unprofessional conduct who permits, directs or supervises the prescription of substances or procedures within the scope of practice of a doctor of oriental medicine by an unlicensed agent or employee. This provision shall not apply to a patient carrying out the instructions of his or her doctor of oriental medicine, temporary licensee, or extern when it is part of the patient's treatment providing that the instructions are simple and clear and there is no danger to the patient. This provision shall not apply to

a student enrolled in an educational program practicing under the direct supervision of a teacher as part of the educational program in which he [or she] is enrolled.

[4-1-97, 16.2.12.30 NMAC - Rn & A, 16 NMAC 2.12.30, A, 8-13-01; A, 11-28-09]

16.2.12.32 INCOMPETENCE AND UNPROFESSIONAL CONDUCT: The specifications of incompetence and unprofessional conduct defined in the act and 16.2.12 NMAC [~~Part 12 of the rules~~] shall not be exclusive of the types of acts and omissions which may be found by the board to constitute incompetence or unprofessional conduct.

[4-11-89...7-1-96; 16 NMAC 2.12.28, 4-1-97; 16.2.12.32 NMAC - Rn, 16 NMAC 2.12.32, 8-13-01; A, 02-15-05; A, 11-28-09]

16.2.12.35 [E X T E N D E D OR] EXPANDED PRESCRIPTIVE AUTHORITY INCOMPETENCE: Pursuant to the Act, Section 61-14A-17.A (3) NMSA 1978, a doctor of oriental medicine certified for the [~~extended prescriptive authority~~ or] expanded prescriptive authority shall be guilty of incompetence if he [or she], when diagnosing and treating a patient, does not possess and apply the knowledge and use the skill and care ordinarily used by similarly certified doctors of oriental medicine.

[16.2.12.35 NMAC - N, 02-15-05; A, 11-28-09]

16.2.12.36 INCOMPETENCE: Pursuant to the Act, Section 61-14A-17.A (3) NMSA 1978, [~~A~~] a doctor of oriental medicine or a doctor of oriental medicine certified in expanded practice who injudiciously prescribes, administers, or dispenses a drug as defined in the New Mexico Drug, Device and Cosmetic Act shall be guilty of incompetence.

[16.2.12.36 NMAC - N, 02-15-05; A, 11-28-09]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.17 NMAC Sections 8, 9, 10, 11, 14, 15 and 16 effective 11/28/09.

16.2.17.8 G E N E R A L REQUIREMENTS:

A. [~~An applicant for licensure by endorsement must have clinical experience, as defined in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules), for at least eighty (80) percent of the years since 1986.~~] An applicant for licensure by endorsement must have three years of clinical experience, within the last five years as defined in 16.2.1.7 NMAC immediately preceding application.

B. An applicant for licensure by endorsement must be licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine in another state or jurisdiction of the United States.

C. Any applicant for licensure by endorsement who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC [~~(Section 10 of Part 17 of the rules)~~] may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.

D. Any applicant for licensure by endorsement who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[16.2.17.8 NMAC - N, 02-15-05; A, 11-28-09]

16.2.17.9 EDUCATIONAL PROGRAM REQUIREMENTS:

A. An applicant for licensure by endorsement shall provide proof that he [or she] completed an educational program in acupuncture that fulfilled the requirements of the national certification commission for acupuncture and oriental medicine in place in 1986 or that was accredited by the accreditation commission for acupuncture and oriental medicine, ACAOM, formerly the national accreditation commission for schools and colleges of acupuncture and oriental medicine and ACSCAOM.

B. If the educational program is no longer in existence, or if the applicant's records are not available for good cause, the applicant for licensure by endorsement shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept or reject as adequate and sufficient such evidence presented in lieu of the records otherwise required.

[16.2.17.9 NMAC - N, 02-15-05; A, 11-28-09]

16.2.17.10 I N I T I A L LICENSURE BY ENDORSEMENT

APPLICATION: Upon approval of a licensure by endorsement application that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure. The application requirements for licensure by endorsement shall be receipt of the following by the board:

A. the fee for application for licensure by endorsement specified in 16.2.10 NMAC [~~(Part 10 of the rules); and~~];

B. a licensure by endorsement application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available; [~~and~~]

C. two [~~(2)~~] passport-type photographs of the applicant taken not more than six months prior to the submission of the application; [~~and~~]

D. an affidavit as provided on the initial licensure by endorsement application form as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture or oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; [~~or~~]

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; [~~or~~]

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; [~~or~~]

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; and

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine

Practice Act; and

F. an affidavit as provided on the initial licensure by endorsement application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC [~~(Section 10 of Part 17 of the rules)~~] may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; and

G. an affidavit as provided on the initial licensure by endorsement application form stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; [~~and~~]

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within ten (10) days if the applicant's address changes; and

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC [~~(Section 9 of Part 17 of the rules)~~]; this copy shall include on it an affidavit certifying that it is a true copy of the original; [~~and~~]

I. a copy of the applicant's transcript from the educational program in acupuncture or oriental medicine evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC [~~(Section 9 Part 17 of the rules)~~]; this copy shall include on it an affidavit certifying that it is a true copy of the original; [~~and~~]

J. a copy of the applicant's license, certificate, registration or legal authority to practice acupuncture or oriental medicine in another state or jurisdiction of the United States; [~~and~~]

K. proof of clinical experience as required in Subsection A of 16.2.17.8 NMAC [~~(Section 8 of Part 17 of~~

the rules)]; [~~and~~]

L. proof of successful completion of the examinations required below in 16.2.17.11 NMAC [~~(Section 11 of Part 17 of the rules)~~]; and

M. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.17.10 NMAC - N, 02-15-05; A, 11-28-09]

16.2.17.11 EXAMINATION REQUIREMENTS:

The following requirements shall be received at the board's office within [~~twelve (12)~~] 12 months of the receipt of the initial licensure by endorsement application:

A. proof of successful completion of one of the following examination options:

(1) the national certification commission for acupuncture and oriental medicine (NCCAOM) comprehensive written exam (acupuncture portion); [~~or~~]

(2) the NCCAOM foundations of oriental medicine module and the acupuncture module if completed after June 2004; [~~or~~]

(3) the NCCAOM comprehensive written exam (Chinese herbology portion); or

(4) the NCCAOM foundations of oriental medicine module and the Chinese herbology module if completed after June 2004; and

B. proof of successful completion of the NCCAOM approved clean needle technique course; [~~and~~]

C. proof of successful completion of the New Mexico clinical skills examination specified in 16.2.4.10 NMAC [~~(Section 10 of Part 4 of the rules)~~]; and

D. proof of successful completion of the board approved and board administered jurisprudence examination specified in [~~Section 10 of 16.2.4 NMAC (Part 4 of the rules)~~] 16.2.4.10 NMAC.

[16.2.17.11 NMAC - N, 02-15-05; A, 11-28-09]

16.2.17.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE:

All documentation required for licensure by endorsement shall

be received at the board office no later than [twelve (12)] 12 months after the initial application for licensure by endorsement is received at the board office.

[16.2.17.14 NMAC - N, 02-15-05; A, 11-28-09]

16.2.17.15 NOTIFICATION OF

LICENSURE: The applicant for licensure by endorsement shall be notified of approval or denial of his or her completed application requirements including examination requirements by mail postmarked no more than [twenty-one (21)] 21 days from the board's receipt of all required documentation. The board shall issue a license to all applicants who have met the requirements of 16.2.17 NMAC [(Part 17 of the rules)].

[16.2.17.15 NMAC - N, 02-15-05; A, 11-28-09]

16.2.17.16 EXPIRATION AND ABANDONMENT OF APPLICATION:

If all licensure by endorsement application requirements have not been met within [twelve (12)] 12 months of the initial licensure by endorsement application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the licensure by endorsement application is abandoned and the applicant for licensure by endorsement wants to reapply, the applicant for licensure by endorsement shall be required to submit the completed current licensure by endorsement application form, pay the current application fee and satisfy the requirements for licensure by endorsement in effect at the time of the new licensure by endorsement application. The board shall notify the applicant for licensure by endorsement of pending abandonment of the licensure by endorsement application by mail postmarked at least [sixty (60)] 60 days before the date of abandonment which is the expiration of the [twelve (12)] 12 month deadline for completing all requirements for licensure by endorsement. The board shall notify the applicant for licensure by endorsement of abandonment of the application by mail postmarked no more than [twenty-one (21)] 21 days after the date of abandonment.

[16.2.17.16 NMAC - N, 02-15-05; A, 11-28-09]

NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

8.50.112 NMAC, Administrative Enforcement of Support Obligations, filed May 14, 2001 is repealed effective November 13, 2009 and replaced by 8.50.112 NMAC,

Administrative Enforcement of Support Obligations, effective November 13, 2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM PART 112 ADMINISTRATIVE ENFORCEMENT OF SUPPORT OBLIGATIONS

8.50.112.1 ISSUING AGENCY:

New Mexico Human Services Department - Child Support Enforcement Division
[8.50.112.1 NMAC - Rp, 8.50.112.1 NMAC, 11/13/09]

8.50.112.2 SCOPE: To the general public. For use by the IV-D agency and recipients of IV-D services.

[8.50.112.2 NMAC - Rp, 8.50.112.2 NMAC, 11/13/09]

8.50.112.3 STATUTORY

AUTHORITY: Public Assistance Act, Section 27-2-27 NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).

[8.50.112.3 NMAC - Rp, 8.50.112.3 NMAC, 11/13/09]

8.50.112.4 DURATION:

Permanent.
[8.50.112.4 NMAC - Rp, 8.50.112.4 NMAC, 11/13/09]

8.50.112.5 EFFECTIVE DATE:

November 13, 2009, unless a later date is cited at the end of a section.

[8.50.112.5 NMAC - Rp, 8.50.112.5 NMAC, 11/13/09]

8.50.112.6 OBJECTIVE:

To conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Child Support Performance and Incentive Act of 1998, and the Deficit Reduction Act of 2005. The regulations herein codify present practices in accordance with federal and state law and regulations.

[8.50.112.6 NMAC - Rp, 8.50.112.6 NMAC, 11/13/09]

8.50.112.7 DEFINITIONS:

[RESERVED]

[See 8.50.100.7 NMAC]

8.50.112.8 PARENTAL RESPONSIBILITY ACT (LICENSE

SUSPENSION): The IV-D agency submits a certified list of support obligors who are thirty days or more delinquent on their monthly support obligation. The certified list is submitted to the appropriate boards, departments, and bureaus for drivers, professional, occupational, and recreational licenses as detailed in the Parental Responsibility Act NMSA 1978, Sect. 40-5A-1 et seq.

A. Automated referral process: The IV-D agency provides a certified list of all obligors who meet referral criteria to various licensing boards. The licensing boards report back to the IV-D agency the action the board has taken in connection with the Parental Responsibility Act. The IV-D automated system will refer cases which meet the following criteria:

(1) the obligor is in arrears thirty days or more in payment of court ordered support;

(2) the obligor has been sent a notice of potential submittal by the IV-D agency to the obligor's last address of record with the IV-D agency; and

(3) thirty calendar days have elapsed since the transmittal of the notice.

B. Manual referral process: Any delinquent obligor who does not meet the automated referral criteria described above may be referred manually. Obligors who have failed to comply with an order for support and are more than thirty days in arrears can be referred for license suspension.

C. Administrative hearing by the licensing boards: If requested by the hearing officer, the IV-D agency will make available a witness to testify on the IV-D agency's behalf at an administrative hearing which may be held in connection with this act.

D. Settlement:

(1) In all cases, the IV-D agency must make every effort to obtain payments in full for all arrearages, including prior judgments and current delinquency.

(2) If the obligor pays all the arrearages, including prior judgments and current delinquency, a certificate of compliance will be issued upon receipt of the request from the local field office.

(3) If the obligor cannot or will not pay all arrearages, the obligor will be instructed to pay the current delinquency in full. If the obligor pays the delinquency in full, and is in compliance with all other terms of the existing order, a new stipulated order is not necessary and a certificate of compliance will be issued. If the obligor cannot pay the current delinquency in full, partial payment may be accepted at the discretion of the IV-D agency.

(4) Alternatively, the IV-D agency may issue a certificate of compliance if the obligor has had wage withholding in place for at least three consecutive months and the

amount withheld is the correct amount based upon the obligor's total monthly support obligation(s) (ongoing support plus payment to arrears) and payroll schedule. If the certificate of compliance is issued pursuant to a partial payment or due to consecutive wage withholding, the obligor must sign a new order that provides for an increased monthly payment to reduce arrearages and agrees to contempt of court language to include the issuance of a bench warrant if the obligor fails to make future payments as ordered. These provisions must be included in any new orders negotiated as a result of the act.

E. Arrears only cases: In an arrears only case, the monthly payment must be calculated using the current child support guidelines or a schedule that will fully pay the arrearages plus accumulated interest in 72 months or less.

F. Erroneous or inappropriate referrals:

(1) Certificates of compliance due to erroneous or inappropriate referrals and requests to waive the reinstatement fees will be issued and approved only under the following circumstances:

(a) the obligor does not have a court ordered support obligation;

(b) the delinquency does not equal or exceed at least one month's support obligation;

(c) the court order prohibits the IV-D agency from referring the obligor for license suspensions;

(d) the IV-D agency cannot establish that the notice informing the obligor that their license is subject to suspension was sent to their last known address; or

(e) the amount owed is in dispute and the case is scheduled for a court hearing to settle the dispute.

(2) If the obligor meets the minimum criteria for referral, there will be no certificates of compliance issued due to erroneous or inappropriate referral. If an agreement is reached and a certificate of compliance is issued, the obligor will be required to pay the appropriate reinstatement fee.

G. Responsibilities of the obligor: The obligor has the following responsibilities.

(1) The obligor must supply a valid mailing address for the certificate of compliance to be mailed when complete. The obligor may elect to have the certificate of compliance sent to his/her attorney of record, but must also provide the IV-D agency with a current, valid mailing address and physical address for the obligor.

(2) The obligor is entirely responsible for submitting the certificate(s) of compliance to all licensing agencies for the reinstatement of any and all licenses within 30 days of date of the certificate of

compliance is issued. Failure to submit a certificate of compliance and pay required fees will result in the obligor's license(s) continued suspension. The IV-D agency will not re-issue a certificate of compliance if the obligor fails to maintain compliance with all court orders for support.

[8.50.112.8 NMAC - Rp, 8.50.112.8 NMAC, 11/13/09]

8.50.112.9 CONSUMER REPORTING AGENCIES (CREDIT BUREAUS):

A. The New Mexico IV-D agency is required by federal law to report periodically to consumer reporting agencies the name of any obligor who is delinquent in the payment of support and the amount of overdue support. The IV-D agency has procedures in place that ensure that overdue support is reported:

(1) after the obligor has been afforded due process required under state law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(2) to an entity that has furnished evidence satisfactory to the state that the entity is a legitimate consumer reporting agency.

B. At the request of a consumer reporting agency, and upon thirty day's advance notice to the obligor at the obligor's last known address, the department, in accordance with its regulations, may release information regarding the delinquency of an obligor. The department may charge a reasonable fee to the consumer reporting agency.

[8.50.112.9 NMAC - Rp, 8.50.112.9 NMAC, 11/13/09]

8.50.112.10 COLLECTION OF PAST DUE SUPPORT BY FEDERAL TAX REFUND OFFSET:

Federal tax refund offset is utilized to pay child and spousal support delinquencies and arrearages. Cases meeting specific criteria are referred to the U.S. department of treasury's financial management service. A non-TANF custodial party who has applied for IV-D services is assessed fees for the federal income tax refund offset remedy. The fees are deducted from the tax refund when it is intercepted. Custodial party consent is not required before submitting the case for offset in any IV-D case. In addition, cases may be submitted where there is past due support on behalf of a disabled adult who was determined to be disabled under Title II or XVI while he or she was still a minor and for whom a support order is still in effect.

A. Joint return: The U. S. internal revenue service (IRS) will offset a refund from a joint income tax return to pay a past due support obligation if either tax

filer is certified as being legally responsible for providing support. Complaints, questions, and forms (i.e., injured spouse claim and allocation) concerning joint refund cases can only be addressed by the IRS. If the obligor's spouse is not liable for the support debt, the IRS will issue a pro rata refund to the spouse (upon the filing of an IRS injured spouse claim and allocation form by the obligor's spouse) and the IV-D agency will be required to reimburse the IRS. The federal government will advise the IV-D agency of any adjustments to IV-D collections. The injured spouse may also voluntarily release the claim to his/her portion of the joint refund. This will result in an immediate distribution of the refund amount to the IV-D case. An injured spouse may request the release form from the IV-D agency.

B. Criteria for federal income tax offset: A IV-D case may be referred for federal income tax offset regardless of whether the child(ren) are emancipated so long as there is a delinquency or arrearage owed. IV-D cases that only have spousal support delinquencies or arrearages will not be referred for federal income tax offset if there is no ongoing child support obligation, delinquency, or arrearage. IV-D cases that are solely for processing payments will not be referred. Only IV-D cases which meet one of the following criteria are to be referred for federal income tax offset:

(1) there has been an assignment of support rights;

(2) the IV-D agency is enforcing the support obligation; or

(3) there is an assignment of medical support rights.

C. IV-D cases referred must additionally meet the following certification criteria:

(1) in TANF or title IV-E foster care cases the amount of past due assigned support must not be less than \$150; or

(2) in non-TANF or medicaid-only cases the amount of past due unassigned support owed to or on behalf of a qualified child must be at least \$500.

D. Periodic updates on referred obligors are sent by the IV-D agency to the treasury department. Those updates may result in modifications up or down on the balance due or deletions from the referral.

E. Bankruptcy cases: The IV-D agency may not submit a case in which the non-custodial parent or his or her spouse has filed for bankruptcy under Title VII, XI, XII, and XIII of the United States bankruptcy code and an automatic stay is in effect without the express approval of an OGC-CSED attorney. When the automatic stay, under Section 362 of the bankruptcy code, has been lifted or is no longer in effect with respect to the individual owing

the obligation, and the obligation was not discharged by the bankruptcy proceeding, the case may be submitted for offset without OGC-CSED attorney approval.

F. Notification of federal income tax offset:

(1) Written advance notice is sent to inform an obligor that the amount of his/her past due support will be referred to the secretary of the U.S. treasury for collection by federal tax refund offset. The notice informs the obligor:

(a) of their right to contest the department's determination that past due support is owed;

(b) of the right to contest the amount of past due support;

(c) of their right to an administrative review;

(d) of the procedures and time frame for requesting an administrative review; and

(e) the U.S. treasury will notify the obligor's spouse at the time of offset regarding steps to take to protect the share of the refund which may be payable to that spouse.

(2) At the time the offset occurs, the secretary of the U.S. treasury will notify the obligor that the offset has been made. In addition, notice will be provided to any individual who filed a joint return with the obligor, advising him or her of the steps to be taken in order to secure a proper share of the refund.

G. Contesting referral for federal offset: The obligor has thirty days from the date of mailing of the notification of a referral for federal tax intercept to notify the IV-D agency that he/she contests the referral. The notification provides the address and telephone number to contact in order for the obligor to request a hearing to contest the referral. Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and sent to the obligor and the IV-D agency. If the case is a non-IV-A case, the IV-D agency shall send a copy of the notice to the custodial party. The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC. If the appeal request concerns a joint tax refund that has not yet been intercepted, the obligor is informed that the secretary of the U.S. treasury will notify the obligor's spouse at the time of offset regarding steps to take to secure his or her proper share of the refund. If the appeal concerns a joint tax refund which has already been offset, the obligor will be referred to the secretary of the U.S. treasury. If the hearing decision results in a deletion or decrease in the amount referred for offset, the federal office of child support enforcement will be notified. If an amount which has already been offset is found to have exceeded the

amount of past due support owed, steps to refund the excess amount to the obligor will be promptly taken.

H. Interstate cases: The following applies to the New Mexico IV-D agency when it is the state that submits a case for federal income tax offset. The obligor shall request an administrative review be conducted by the New Mexico IV-D agency. If the underlying order upon which the referral for federal income tax offset is based has not been issued by a New Mexico district court, within ten days of the receipt of the obligor's request for administrative review, the New Mexico IV-D agency must notify the IV-D agency in the state that referred the case to New Mexico of the obligor's request for administrative review. Within forty-five days of receipt of the request for administrative review from the New Mexico IV-D agency, the IV-D agency in the state that referred the case to New Mexico should: (1) send notice to all appropriate parties setting forth the time and place of the administrative review; and (2) conduct the review and render a decision. If the administrative review conducted by the IV-D agency in the other state results in a reduction or elimination of the amount referred for offset, the IV-D agency that conducted the administrative review should inform the New Mexico IV-D agency and the federal office of child support enforcement of the decision. The New Mexico IV-D agency shall be bound by the determination of the IV-D agency in the state that conducted the review.

I. Distribution of collections from federal income tax offset: Past-due support amounts collected as a result of the federal income tax refund offset, shall be distributed pursuant to 8.50.125.12 NMAC. The obligor shall receive full credit for the entire amount of tax intercept that is applied to his or her case(s). Distribution of tax intercept money for obligors with multiple IV-D cases shall be in accordance with federal and state laws. If an offset is made to satisfy non-TANF past due support from a refund based upon a joint return, the IV-D agency may delay distribution until notified that the injured spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is shorter.

[8.50.112.10 NMAC - Rp, 8.50.112.10 NMAC, 11/13/09]

8.50.112.11 COLLECTION OF PAST DUE SUPPORT BY NEW MEXICO TAXATION AND REVENUE DEPARTMENT BY STATE TAX REFUND OFFSET: New Mexico law allows for the interception (offset) of an obligor's tax refund to pay child support.

A. Criteria for state income tax offset: Cases submitted for tax refund

offset to the New Mexico taxation and revenue department (TRD) must meet federal tax refund offset criteria. In interstate cases, if New Mexico is the responding state, obligors are referred to (TRD) only, (not to IRS).

B. Pre-offset notices/final notices: Within ten days after receiving notification of an offset from TRD, the Title IV-D agency will send a notice to the obligor at his or her last known address. The notice will include:

(1) a statement that an offset will be made and that the IV-D agency intends to apply the amount of the offset against a claimed debt;

(2) the amount of the debt asserted;

(3) the name, address, and telephone number of the IV-D agency;

(4) the amount of refund to be offset against the debt asserted;

(5) a statement that the obligor has thirty days from the date indicated on the notice to contest the offset by applying to the IV-D agency for a hearing with respect to the validity of the debt asserted by the IV-D agency; and

(6) a statement that failure of the obligor to apply for a hearing within thirty days will be deemed a waiver of the opportunity to contest the offset and to a hearing.

C. If the refund against which a debt is intended to be offset results from a joint return, the IV-D agency will send a notice to the obligor's last known address for the spouse named on the return within ten days after receiving the notification from TRD. The notice to the spouse will contain the following information:

(1) a statement that an offset will be made and the IV-D agency intends to apply the amount of the offset against a claimed debt;

(2) the total amount of the refund and the amount of each claimed debt;

(3) the name, address, and telephone number of the IV-D agency;

(4) a statement that no debt is claimed against the spouse and that the spouse may be entitled to receive all or part of the refund regardless of the claimed debt against the obligor;

(5) a statement that to assert a claim to all or part of the refund, the spouse must notify the IV-D agency within thirty days from the date indicated on the notice of the intent of the spouse to seek his or her portion of the refund; and

(6) a statement that failure of the spouse to notify the IV-D agency regarding his or her claim to all or part of the refund within thirty days may be deemed a waiver of any claim of the spouse with respect to the refund.

D. Upon the transfer of money from TRD to the IV-D account, the

IV-D agency will notify the obligor of the final determination of the offset. The notice includes:

(1) the amount of the TRD refund to which the obligor was entitled prior to intercept;

(2) the offset amount and balance, if any, of the debt still due; and

(3) the amount of refund in excess of the debt due and owed to the obligor.

E. Contesting referral for state tax offset: The appeal procedures are the same as for federal tax refund offset with some exceptions.

(1) When the injured spouse who has filed jointly contacts the Title IV-D agency within the time required, no tax intercept hearing is held. Upon verification, the injured spouse portion will be refunded as soon as the TRD money is posted to the case, and the obligor will not be given credit for the injured spouse's portion of the payment.

(2) If the obligor's spouse files "married, but separated" the state taxation and revenue department does not honor this filing status for offset purposes and will offset the obligor's spouse's refund. In this instance, the injured spouse may contact the IV-D agency. Upon notification the IV-D tax intercept unit will contact TRD to obtain verification, and upon obtaining verification, the IV-D agency will refund the spouse's portion of the offset to the injured spouse.

(3) If the injured spouse determines that he or she is entitled to more than one-half of the offset, he or she must notify the IV-D agency within thirty days of the date of mailing of the notice of offset that he or she wants a hearing regarding the claim to a larger portion of the offset.

F. Distribution of collections from state income tax offset: State income tax offset collections will be placed on hold for thirty days. After the thirty-day hold, the state income tax offset monies will be applied as a regular payment and distributed as outlined in 8.50.125.11 NMAC. If the injured spouse does not claim the injured spouse portion within the time frame required, the whole amount of the state income tax offset collection will be distributed and disbursed as a payment to the IV-D case.

[8.50.112.11 NMAC - Rp, 8.50.112.11 NMAC, 11/13/09]

8.50.112.12 FULL COLLECTION SERVICES BY THE SECRETARY OF THE TREASURY: Cases are referred for full collection services after reasonable efforts have been made to collect the support through available mechanisms and these efforts have failed.

A. For a case to be eligible for certification to the secretary of the treasury, the following criteria must be met:

(1) a valid order for support must be in place;

(2) at least six months shall have elapsed since the last request for referral of the case to the secretary of the treasury for full collection services;

(3) only the state which has taken an assignment or an application or referral may request secretary of the treasury collection services on behalf of a given case; and

(4) the amount of past due support shall be at least \$750.

B. Once a case is certified for full collection, it will remain open for six years or until the amount certified is collected in full, or until the case is closed. [8.50.112.12 NMAC - Rp, 8.50.112.12 NMAC, 11/13/09]

8.50.112.13 DENIAL OF PASSPORTS FOR NONPAYMENT OF CHILD SUPPORT:

A. Referral for passport denial: The IV-D agency certifies obligors who owe support arrears in excess of \$2,500. The U. S. department of state denies passports to individuals whose name appears on the certified database of the office of child enforcement (OSCE) as owing more than \$2,500. Once the department of state identifies a passport applicant as owing money for child support, the applicant will be notified by letter the passport has been denied, pending satisfactory payment of money owed to the IV-D agency. After the applicant makes satisfactory payment arrangements with the IV-D agency, the IV-D agency shall request that OCSE remove the applicant's name from its database. The IV-D agency makes every effort in its negotiations to obtain a lump sum payment sufficient to satisfy the entire delinquency and arrears balances.

B. Contesting referral for passport denial: The obligor has thirty days from the date of the notification of a referral for passport denial to notify the IV-D agency that he/she contests the referral. The notification sent to the obligor provides the address and telephone number for the obligor to contact the IV-D agency to request a hearing to appeal the referral. Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and is sent to the obligor and the IV-D agency stating the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC.

[8.50.112.13 NMAC - Rp, 8.50.112.13 NMAC, 11/13/09]

8.50.112.14 LOTTERY: The IV-D agency and the lottery commission work cooperatively to intercept lottery winnings for debts collected by the IV-D agency.

A. State law authorizes the IV- D agency to place a lien on lottery winnings owed to delinquent obligors. Lists of delinquent obligors are provided by the IV-D agency to the lottery commission who then matches the list with lottery winners of more than \$600. The lottery commission then notifies the IV-D agency of any matches. The lottery commission must be notified by the IV-D agency within five business days with verification of the support lien. The verification of the support lien will include a notice of administrative lien requesting the lottery commission to retain the funds for ninety days or until such time the administrative process is completed, so long as the process is completed within ninety days. If no delinquency exists, the notification will be a release of lien.

B. If the lottery winner is verified by the IV-D agency as owing a debt collected by the agency, the IV-D agency has ninety days to initiate an administrative action against the winner. The IV-D agency will notify the winner by mailing a copy of the notice of administrative lien to the obligor at their last known address via registered mail. The notice of administrative lien will notify the obligor that he or she has fifteen days from the date of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number for the obligor to contact the IV-D agency to request a hearing to appeal the referral. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds to the IV-D agency is mailed to the lottery commission instructing it to forward the lottery winnings to the IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing, an administrative hearing will be conducted in accordance with 8.50.130 NMAC.

[8.50.112.14 NMAC - Rp, 8.50.112.14 NMAC, 11/13/09]

8.50.112.15 GAMING: The IV-D agency and the gaming board work cooperatively to intercept racetrack gaming machine payouts for debts collected by the IV-D agency.

A. State law authorized the IV-D agency to place a lien on gaming machine payouts owed to delinquent obligors. Lists of delinquent obligors are provided by the IV-D agency to the gaming control board on a monthly basis. The racetrack licensees research the names of winners of \$1,200 or more per payout against the list provided to the gaming control board by the IV-D agency. The racetrack licensee then notifies the IV-D agency of any matches. The racetrack licensee must be notified by the IV-D agency within seven business days (excluding weekends and state holidays)

with verification of the support lien. If no delinquency exists, the IV-D agency will notify the racetrack licensee with a release of lien. If a delinquency exists, the verification of the support lien shall include a notice of administrative lien requesting the racetrack licensee to retain the gaming machine payout for ninety days or until such time the administrative process is completed, so long as the process is completed within ninety days. If no delinquency exists, the notification will be a release of lien.

B. If the gaming machine winner is an obligor verified by the IV-D agency as owing a debt collected by the IV-D agency, the IV-D agency has ninety days to complete an administrative action against the winner, unless the winner agrees to an extension of the time limitations or the administrative law judge extends the time. The IV-D agency shall notify the winner by mailing a copy of the notice of administrative lien to the obligor at their last known address via registered mail. The notice of administrative lien shall notify the obligor that he or she has fifteen days from the date of the receipt of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number of the obligor to contact the IV-D agency to request a hearing to appeal the referral. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds to the IV-D agency is mailed to the racetrack licensee within five working days after the obligor fails to request a timely hearing, instructing it to forward the gaming machine payout to the IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing, an administrative hearing will be conducted in accordance with 8.50.130 NMAC. The IV-D agency shall notify the racetrack licensee within five working days of the ruling of any hearing held in accordance with this section. [8.50.112.15 NMAC - Rp, 8.50.112.14 NMAC, 11/13/09]

History of 8.50.112 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: ISD CSEB 501.1100, State and Local Requirements, 6/23/80. ISD CSEB 501.1100, State and Local Requirements, 6/23/80. ISD CSEB 561.0000, Procedures for Enforcement, 6/23/80. ISD CSEB 564.0000, Collection by IRS, 6/23/80. ISD CSEB 564.0000, Collection by IRS, 3/7/84. ISD CSEB 565.0000, U.S. District Court Enforcement, 6/23/80. ISD CSEB 566.0000, Voluntary Wage

Allotments of Federal Employees and Processing of Garnishment Orders for Child Support and/or Alimony, 11/3/81.

NMAC History:

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, 12/30/94.

History of Repealed Material:

8 NMAC 5.CSE, Child Support Enforcement - Repealed 5/31/2001.

8.50.112 NMAC, Administrative Enforcement of Support Obligations, filed 5/14/2001 - Repealed 11/13/2009.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 310 HEALTH CARE PROFESSIONAL SERVICES PART 15 INTENSIVE OUTPATIENT PROGRAM (IOP) SERVICES

8.310.15.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.310.15.1 NMAC - N, 11-13-09]

8.310.15.2 SCOPE: The rule applies to the general public.
[8.310.15.2 NMAC - N, 11-13-09]

8.310.15.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978, section 27-2-12 et seq. (Repl. Pamph. 1991).
[8.310.15.3 NMAC - N, 11-13-09]

8.310.15.4 DURATION:
Permanent
[8.310.15.4 NMAC - N, 11-13-09]

8.310.15.5 EFFECTIVE DATE:
November 13, 2009, unless a later date is cited at the end of a section.
[8.310.15.5 NMAC - N, 11-13-09]

8.310.15.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance programs.
[8.310.15.6 NMAC - N, 11-13-09]

8.310.15.7 DEFINITIONS:
[RESERVED]

8.310.15.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD)

is to reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.

[8.310.15.8 NMAC - N, 11-13-09]

8.310.15.9 INTENSIVE OUTPATIENT PROGRAM SERVICES: MAD pays for medically necessary health services furnished to eligible recipients. To help New Mexico eligible recipients receive medically necessary services, MAD pays for covered intensive outpatient program (IOP) services. IOP services provide a time-limited, multi-faceted approach to treatment service for eligible recipients who require structure and support to achieve and sustain recovery. The IOP model is based on research and evidence-based interventions that target specific behaviors with individualized behavioral interventions. Services must be delivered through a MAD approved agency, as specified in 8.310.15.10 NMAC, *eligible providers*.

[8.310.15.9 NMAC - N, 11-13-09]

8.310.15.10 ELIGIBLE PROVIDERS:

A. Healthcare to New Mexico MAD eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instructions on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only.

Providers must supply necessary information in order for payment to be made.

B. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

C. The following six types of agencies are eligible to be reimbursed for providing IOP services when they have a researched-based model meeting the requirements of Subsection F of 8.310.15.14 NMAC, *covered services*:

- (1) a community mental health center (CMHC);
- (2) a rural health clinic (RHC);
- (3) a federally qualified health center (FQHC);
- (4) an Indian health services (IHS) facility;
- (5) a PL-93-638 tribal 638 facility; and

(6) an agency approved by MAD after demonstrating that the agency meets all the requirements of an IOP program services and supervision requirements.

D. Services must be provided within the scope of the practice and licensure for each provider and must be in compliance with the statutes, rules and regulations of the applicable practice act and must be eligible for reimbursement as described in 8.310.8 NMAC *Behavioral Health Professional Services*.

E. Each IOP program must have a clinical supervisor. The clinical supervisor may also serve as the IOP program supervisor. Both clinical services and supervision by licensed practitioners must be conducted in accordance with respective licensing board regulations. An IOP clinical supervisor must meet all the following requirements:

- (1) licensed as an independent practitioner, see Subsection C above;
- (2) two years relevant experience with IOP eligible recipients;
- (3) one year demonstrated supervisory experience; and
- (4) expertise in both mental health and substance abuse treatment.

F. IOP providers are required to develop and implement a program evaluation system.

G. Provider agencies must maintain the appropriate state facility licensure if offering medication treatment or medication replacement services.

H. The agency must provide MAD with a letter of readiness review approval from the appropriate state agency.

[8.310.15.10 NMAC - N, 11-13-09]

8.310.15.11 PROVIDER

RESPONSIBILITIES:

A. A provider who furnishes services to a medicaid or other health care program eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.

C. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

See 8.302.1 NMAC, *General Provider Policies*.

[8.310.15.11 NMAC - N, 11-13-09]

8.310.15.12 ELIGIBLE RECIPIENTS:

A. IOP services are provided to youth, aged 13-17 years, diagnosed with substance abuse disorders or with co-occurring disorders (serious emotional disturbance and substance abuse) or that meet the American society of addiction medicine (ASAM) patient placement criteria for level two (II) - intensive outpatient treatment.

B. IOP services are provided to adults aged 18 years and over diagnosed with substance abuse disorders or with co-occurring disorders (serious mental illness and substance abuse) or that meet the ASAM patient placement criteria for level two (II) - intensive outpatient treatment.

C. Before engaging in an IOP program, the eligible recipient must have a treatment file from an appropriate practitioner or agency that contains at least the following items:

- (1) one diagnostic evaluation; and

(2) one individualized service plan that includes IOP as an intervention.

[8.310.15.12 NMAC - N, 11-13-09]

8.310.15.13 COVERAGE CRITERIA:

IOP services provide a time-limited, multi-faceted approach to treatment service for eligible recipients who require structure and support to achieve and sustain recovery. The IOP model is based on research and evidence-based interventions that target specific behaviors with individualized behavioral interventions. Services must be culturally-sensitive and incorporate recovery and resiliency values into all service interventions. Treatment services should address co-occurring mental health disorders, as well as substance use disorders, when indicated. The IOP services are provided through an integrated multi-disciplinary approach or through coordinated, concurrent services with behavioral health providers, with the intent that the IOP service shall not exclude consumers with co-occurring disorders.

[8.310.15.13 NMAC - N, 11-13-09]

8.310.15.14 COVERED SERVICES:

A. MAD covers services and procedures that are medically necessary for the evaluation, assessment, diagnosis and treatment of, an illness or injury as indicated by the eligible recipient's condition. All services must be furnished within the limits of provider program rules and within the scope and practice of the provider's professional standards. See 8.310.8 NMAC, *Behavioral Health Professional Services*, for those providers that are approved to provide behavioral health services reimbursable by MAD.

B. IOP core services include:

- (1) individual therapy;
- (2) group therapy (group membership may not exceed 15 in number; and
- (3) psycho education for the eligible recipient and their family.

C. Eligible recipient youth or transition-age young adult is defined as "seventeen (17) years and under." This population should engage in IOP treatment in an environment separate from the adult eligible recipient.

D. Co-occurring mental health and substance use disorders: IOP must accommodate the needs of the eligible recipient with co-occurring substance use and mental health disorders. Treatment services are provided through an integrated multi-disciplinary approach or coordinated, concurrent services with behavioral health providers. Medication management services are available to oversee use of psychotropic medications.

E. Duration: the duration of IOP intervention is typically three to six months; the amount of weekly services per eligible recipient is directly related to the goals and objectives specified in the eligible recipient's treatment or service plan.

F. IOP services must be rendered through one of the following research-based models:

(1) any models other than those identified below must be approved by HSD or its authorized agents;

(2) matrix model adult treatment model;

(3) matrix model adolescent treatment model;

(4) Minnesota treatment model; or

(5) integrated dual disorder treatment.

G. Services not provided in accordance with the conditions for coverage as specified in 8.310.15.10 NMAC, *eligible providers*, and 8.310.15.14 NMAC, *covered services*, are not covered services and are subject to recoupment.

[8.310.15.14 NMAC - N, 11-13-09]

8.310.15.15 P R I O R AUTHORIZATION AND UTILIZATION REVIEW:

All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Reviews can be performed before services are furnished, after services are furnished, and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. The provider must contact HSD or its authorized agents to request utilization review instructions. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for authorization of services.

A. **Prior authorization:** Certain procedures or services may require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process, including after payment has been made. See Subsection A of 8.311.2.16 NMAC, *emergency room services*.

B. **Eligibility determination:** Prior authorization of services does not guarantee that an individual is eligible for medicaid or other health care programs. A provider must verify that an individual is eligible for a specific program at the time services are furnished and must determine if the eligible recipient has other health insurance.

C. Reconsideration:

A provider who disagrees with prior authorization denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[8.310.15.15 NMAC - N, 11-13-09]

8.310.15.16 NON COVERED SERVICES:

The following services may not be billed in conjunction with IOP services:

A. acute inpatient;

B. residential treatment services (i.e., accredited residential treatment centers, residential treatment centers, group home, and transitional living services);

C. assertive community treatment;

D. partial hospitalization;

E. outpatient therapies (family and group therapy may be billed only if there are clinical issues beyond the scope of the IOP services);

F. multi-systemic therapy;

G. activity therapy;

H. psychosocial rehabilitation (PSR) services group; and

I. services provided by a practitioner that is not an eligible provider as listed in 8.310.8 NMAC, *Behavioral Health Professional Services*.

[8.310.15.16 NMAC - N, 11-13-09]

8.310.15.17 REIMBURSEMENT:

A. An IOP service provider must submit claims for reimbursement on the CMS-1500 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing. Reimbursement to a provider for covered services is made at the lesser of the following:

(1) the provider's billed charge; or

(2) the MAD fee schedule for the specific service or procedure.

B. The provider's billed charge must be their usual and customary charge for services. "Usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.

C. IOP services furnished by IOP licensed providers are billed by the eligible agencies identified in Subsection C of 8.310.15.14 NMAC, *covered services*, whether they are employed or whether they furnish services under contract.

D. IOP services must be provided directly to the eligible recipient by the licensed IOP professional allowed to provide the services as listed in Subsection A - D of 8.310.15.10 NMAC, *eligible providers*.

[8.310.15.17 NMAC - N, 11-13-09]

HISTORY OF 8.310.15 NMAC: [RESERVED]

NEW MEXICO STATE INVESTMENT COUNCIL

The State Investment Council repeals its rule SIC Rule 93-4 (filed 07/01/1994) [recompiled as 2.60.18 NMAC] and entitled "Severance Tax Permanent Fund Certificate of Deposit Investment Policy", effective 11/13/2009.

NEW MEXICO BOARD OF PHARMACY

New Mexico Board of Pharmacy

16.19.8 NMAC, Occupational and Professional Licensing, Pharmacists, Wholesale Prescription Drug Distribution, (filed 02-02-1996 and 03-01-2002), is repealed and replaced with the new part 16.19.8 NMAC, Wholesale Prescription Drug Distribution, effective 12-02-2009.

NEW MEXICO BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 8 WHOLESALE PRESCRIPTION DRUG DISTRIBUTION

16.19.8.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy.

[16.19.8.1 NMAC - Rp, 16.19.8.1 NMAC, 12-02-09]

16.19.8.2 SCOPE: All individuals and entities engaged in the wholesale distribution of prescription drugs, including manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution.

[16.19.8.2 NMAC - Rp, 16.19.8.2 NMAC, 12-02-09]

16.19.8.3 STATUTORY AUTHORITY:

Section 61-11-6(A)6 NMSA 1978 directs the board of pharmacy to provide for the licensing of drug manufacturers, repackagers and wholesale drug distributors and for the inspection of their facilities and activities. Section 61-11-6(A)7 NMSA 1978 authorizes the board to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons,

including the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article I NMSA 1978. Pursuant to Section 26-1-18 of the Drug, Device and Cosmetic Act, the board is authorized to promulgate regulations for the efficient enforcement of the act.

[16.19.8.3 NMAC - Rp, 16.19.8.3 NMAC, 12-02-09]

16.19.8.4 D U R A T I O N : Permanent

[16.19.8.4 NMAC - Rp, 16.19.8.4 NMAC, 12-02-09]

16.19.8.5 EFFECTIVE DATE: December 2, 2009, unless a different date is cited at the end of a section.

[16.19.8.5 NMAC - Rp, 16.19.8.5 NMAC, 12-02-09]

16.19.8.6 OBJECTIVE: The objective of Part 8 of Chapter 19 is to implement the Federal Prescription Drug Marketing Act of 1987 (Pub. L. 100-293, amending the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 321 et seq.), by providing minimum standards, terms and conditions for the licensing by the board of persons who engage in wholesale distribution of prescription drugs.

[16.19.8.6 NMAC - Rp, 16.19.8.6 NMAC, 12-02-09]

16.19.8.7 DEFINITIONS:

A. "Adulterated" a drug or device shall be deemed to be adulterated if it:

(1) consists in whole or part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

(3) is a drug and the methods used in or the facilities of controls used for its manufacture, processing, packing or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of the New Mexico Drug, Device and Cosmetic Act (this article) as to safety and has the identity and strength and meets the quality and purity characteristics which purports or is represented to possess;

(4) is a drug and its container is composed in whole or part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains for purposes of coloring only a color additive which is unsafe within the meaning of the federal act or it is a color additive the intended use of which in drugs is for the purpose of coloring only and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug the name of which is recognized in an official compendium and its strength differs from or its quality or purity falls below the standard set forth in such compendium; such determination as to strength, quality and purity shall be made in accordance with the tests or methods of assay set forth in such compendium or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal act; no drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality or purity therefore set forth if such standard is plainly stated on its label; whenever a drug is recognized both in the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not those of the United States pharmacopoeia;

(7) is not subject to the provisions of Subsection B of 16.19.8.7 NMAC and its strength differs from or its purity or quality falls below that which it purports or is represented to possess;

(8) is a drug and any substance has been mixed or packed therewith so as to reduce its quality or strength or substituted wholly or in part therefore.

B. "Authenticate" means to affirmatively verify before any wholesale distribution of a prescription drug acquired outside of the normal distribution channel occurs, that each transaction listed on the pedigree has occurred in accordance with the rules of the board.

C. "Authorized distributor of record" means a wholesale distributor with whom a manufacturer, manufacturer's co-licensed partner or the affiliated group of either the manufacturer or co-licensed partner has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor as defined in Section 1504 of the Internal Revenue Code, complies with the following:

(1) the wholesale distributor has a written agreement currently in effect with the manufacturer, manufacturer's co-licensed partner or the affiliated group of either the manufacturer or co-licensed partner evidencing such ongoing relationship; and

(2) the wholesale distributor is listed on the current list of authorized distributors of record issued by the

manufacturer, manufacturer's co-licensed partner or the affiliated group of either the manufacturer or co-licensed partner. This list must be updated on no less than a monthly basis.

D. "Blood" means the whole blood collected from a single donor and processed either for transfusion or further manufacturing.

E. "Blood component" means that part of blood separated by physical or mechanical means.

F. "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

G. "Common carrier" means any person or entity who undertakes, whether directly or by any other arrangement, to transport property including prescription drugs for compensation.

H. "Counterfeiting" means engaging in activities that create a counterfeit drug.

I. "Counterfeit drug" means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) identical copies: which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) look-alikes: which feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) rejects: which are drugs that have been rejected by the manufacturer for not meeting quality standards;

(4) re-labels: which have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials.

J. "Counterfeit prescription drug" means a dangerous drug which, or the container or labeling of which, without authorization:

(1) bears the trademark, trade name, or other identifying mark, print, device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packaged, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by such other drug manufacturer, processor, packer, or distributor;

(2) from the original manufacturer is an imitation of another dangerous drug or has been deliberately mislabeled (for

example, as to its strength or expiration date) but it shall not include a dangerous drug or placebo intended for use in a clinical trial that is intentionally labeled or marked to maintain proper blinding of the study.

K. "Dangerous drug" also known as a "prescription drug" means a drug other than a controlled substance enumerated in schedule I of the Controlled Substance Act, that because of potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use (directions under which the layman can use a drug or device safely and for the purposes for which intended) cannot be prepared. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe the drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit-forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend "Caution: federal prohibits dispensing without prescription";

(5) bears the legend "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

(6) bears the legend "RX only"; or

(7) has been declared a dangerous drug by the board of pharmacy.

L. "Designated representative" means an individual designated by the wholesale distributor who will serve as the responsible individual of the wholesale distributor with the board who is actively involved in and aware of the actual daily operation of the wholesale distributor.

M. "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug or by that manufacturer's co-licensed product partner, that manufacturer's third party logistics provider, that manufacturer's exclusive distributor, by an authorized distributor of record or by the affiliated group of any of these entities that purchased the product directly from the manufacturer or from one of these entities whereby:

(1) the wholesale distributor takes title to but not physical possession of such prescription drug;

(2) the wholesale distributor invoices the pharmacy, pharmacy warehouse or other person authorized by law to dispense or administer such drug;

(3) the pharmacy, pharmacy warehouse or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer or from the manufacturer's co-licensed product partner, that manufacturer's third party logistics provider, that manufacturer's exclusive distributor or by the affiliated group of any of these entities from an authorized distributor of record, that purchased the product directly from the manufacturer or from one of these entities.

N. "Drug" means articles:

(1) recognized as drugs in any official compendium or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(3) other than food, intended to affect the structure or any function of the body of humans or other animals;

(4) intended for use as a component of any articles specified in Paragraphs (1), (2), (3) or (4) of Subsection N of 16.19.8.7 NMAC.

O. "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug as defined by the Prescription Drug Marketing Act of 1987.

P. "Emergency medical reasons" include, but are not limited to:

(1) the transfer of a prescription drug between a wholesale distributor or pharmacy to alleviate a temporary shortage of a prescription drug arising from delays in or interruption of regular distribution schedules;

(2) the sales to nearby emergency medical services, i.e. ambulance companies and firefighting organizations in the same state or same marketing or service area or nearby licensed practitioners of prescription drugs for use in the treatment of acutely ill or injured persons;

(3) the provision of minimal emergency supplies of prescription drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary prescription drugs cannot be obtained;

(4) the transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

Q. "Exclusive

distributor" means an entity that:

(1) contracts with a manufacturer, manufacturer's co-licensed partner or affiliated group of either to provide or coordinate warehousing, wholesale distribution or other services on behalf of the entity they have contracted with who takes title to that manufacturer's or manufacturer's co-licensed partner's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug;

(2) is licensed as a wholesale distributor under this chapter;

(3) to be considered part of the "normal distribution channel" must also be an authorized distributor of record.

R. "Facility" means facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

S. "FDA" means food and drug administration, a federal agency within the United States department of health and human services, established to set safety and quality standards for drugs, food, cosmetics and other consumer products.

T. "Federal act" means the Federal Food, Drug and Cosmetic Act.

U. "Immediate container" means a container and does not include package liners.

V. "Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs or devices, consistent with the FDA definition of "manufacturer" under the agency's regulations and interpretive guidance's implementing the Prescription Drug Marketing Act.

W. "Manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis; and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices; also included is the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons.

X. "Misbranded" means a label to an article that is misleading. In determining whether the label is misleading there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the

label or under such conditions of use as are customary or usual.

Y. “Normal distribution channel” means a chain of custody, including intracompany sales, transactions or transfers, for a prescription drug that goes directly or by drop shipment from the manufacturer, its affiliated group as defined in Section 1504 of the Internal Revenue Code, manufacturer’s co-licensed partner or its affiliated group or from any of these entities to their third party logistics provider or exclusive distributor without respect to whether title is transferred to:

(1) either a pharmacy or to other designated persons authorized by law to dispense or administer such drug to a patient; or

(2) an authorized distributor of record and then to either a pharmacy or to other designated persons authorized by law to dispense or administer such drug to a patient; or

(3) an authorized distributor of record to one other authorized distributor of record to an office-based healthcare practitioner or pharmacy or to other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a pharmacy warehouse to the pharmacy warehouse’s intracompany pharmacy to either a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(5) an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse’s intracompany pharmacy to either a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

Z. “Official compendium” means the official United States pharmacopoeia-national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them.

AA. “Pedigree” means the recorded history of the drug.

BB. “Pharmacy warehouse” means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control.

CC. “Prescription drug” means any human drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

DD. “Repackage” means repackaging or otherwise changing the container, wrapper or labeling to further

the distribution of a prescription drug excluding that completed by the pharmacists responsible for dispensing product to the patient.

EE. “Repackager” means a person who repackages.

FF. “Selling of drugs, devices or cosmetics” shall be considered to include the manufacturer, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment.

GG. “Significant loss” means any loss of a prescription drug that exceeds a reasonable level established by like persons which requires that loss to be reported to the board or as required by the DEA or other state or federal agencies for prescription drugs and controlled substances.

HH. “Third party logistics provider” means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition; such third party logistics provider must be licensed as a wholesale distributor under this Act and to be considered part of the “normal distribution channel” must also be an “authorized distributor of record”.

II. “USP standards” means standards published in the current official United States pharmacopoeia-national formulary.

JJ. “Wholesale drug distribution” means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(1) intracompany sales, defined as any transaction or transfer between any division, subsidiary, parent or affiliated or related company under the common ownership and control;

(2) the purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in Section 501(C)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this section, “common control”

means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(5) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons;

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(7) the sale, purchase or trade of blood and blood components intended for transfusion;

(8) any entity exempted by this regulation must keep specific records of purchase, sale, or any manner of distribution of any prescription drug in accordance with Subsection H of 16.19.13 NMAC;

(9) the distribution of prescription drug samples by representatives of the manufacturer, manufacturer’s co-licensed partner, affiliated group of either or authorized distributor of record;

(10) drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23;

(11) the sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use;

(12) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets;

(13) the sale, purchase, distribution, trade or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record when the manufacturer, manufacturer’s co-licensed partner or any affiliated group of either has stated in writing to the receiving authorized distributor of record that they are unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(14) the delivery of or offer to deliver a prescription drug by a common carrier solely in the common carrier’s usual course of business of transporting prescription drugs and such common carrier does not store, warehouse or take legal ownership of the prescription drug;

(15) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, manufacturer’s co-licensed partner or any affiliated group of either, original wholesale distributor or to a third party returns processor or reverse distributor.

KK. “Wholesale drug distributor” means anyone engaged in the wholesale distribution of prescription drugs, including but not limited to, manufacturer’s, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers and distributors warehouses, manufacturer’s exclusive distributors, drug wholesalers or distributors, independent wholesale drug traders, third party logistics providers, retail pharmacies that conduct wholesale distribution and pharmacy warehouses that conduct wholesale distribution.

[16.19.8.7 NMAC - Rp, 16.19.8.7 NMAC, 12-02-09]

16.19.8.8 WHOLESALE DRUG DISTRIBUTOR LICENSING REQUIREMENTS:

A. Every wholesale drug distributor, wherever located, who engages in wholesale distribution into, out of, or within this state must be licensed by the board in accordance with the laws and regulations of this state before engaging in wholesale distribution of prescription drugs. Wholesale distributors cannot operate from a place of residence. Where wholesale distribution operations are conducted at more than one location, each such location shall be licensed by the board of pharmacy.

B. Common or contract carriers or warehousemen, or an employee thereof, whose involvement in the wholesale distribution of prescription drugs occurs in the usual course of his business or employment shall not be required to obtain a wholesale drug distributor license from the board.

[16.19.8.8 NMAC - Rp, 16.19.8.8 NMAC, 12-02-09]

16.19.8.9 MINIMUM REQUIRED INFORMATION FOR WHOLESALE DRUG DISTRIBUTION LICENSURE:

A. Every wholesale distributor who engages in the wholesale distribution of drugs shall license with the board by application and provide information required by the board on an application approved by the board, including but not limited to:

(1) all trade or business names used by the licensee (includes “is doing business as” and “formerly known as”) which cannot be identical to the name used by another unrelated wholesale distributor licensed to purchase drugs or devices in the state;

(2) name(s) of the owner and operator of the licensee (if not the same person) including;

(a) if a person: the name, business address and date of birth;

(b) if a partnership: the name,

business address, date of birth of each partner and the name of the partnership and federal employer identification number;

(c) if a corporation: the name, business address, date of birth, title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, the name of the parent company, if any; the name and business address of each shareholder owning ten percent (10%) or more of the voting stock of the corporation, including over-the-counter (OTC) stock, unless the stock is traded on a major stock exchange and not OTC, publicly held corporations may request a waiver to the requirements of this paragraph pursuant to 16.19.32 NMAC;

(d) if sole proprietorship: the full name, business address, date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(e) if a limited liability company: the name of each member, the name of each manager, the name of the limited liability company and federal employer identification number, the name of the state in which the limited liability company was originated;

(f) any other relevant information that the board requires;

(3) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the wholesale distributor that engages in the distribution of drugs and additional information as required in Subsection F of 16.19.8.13 NMAC;

(4) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the wholesale drug distributor by any other state and federal authority that authorizes the wholesale distributor to purchase, possess and distribute drugs;

(5) a list of all disciplinary actions by state and federal agencies against the wholesale distributor as well as any such actions against principals, owners, directors or officers;

(6) a full description of each facility and warehouse, including all locations utilized for drug storage or distribution; the description must include the following:

(a) square footage;

(b) security and alarm system descriptions;

(c) terms of lease or ownership;

(d) address and;

(e) temperature and humidity controls;

(7) a copy of the deed for the property on which the wholesale distributor’s establishment is located, if the property is owned by the wholesale distributor or a copy of the wholesale distributor’s lease for the property on which the establishment is located that has an original term of not

less than one (1) calendar year, if the establishment is not owned by the wholesale distributor;

(8) information regarding general and product liability insurance, including copies of relevant policies;

(9) a description of the wholesale distributor’s drug import and export activities;

(10) a copy of the wholesale distributor’s written policies and procedures as required in Subsection G of 16.19.8.13 NMAC;

(11) the information collected pursuant to Paragraphs (6) and (10) of this subsection shall be made available only to the board, the third party working on behalf of the board and to state and federal law enforcement officials; the board shall make provisions for protecting the confidentiality of the information collected under this section.

B. Every wholesale drug distributor who engages in wholesale distribution shall submit a reasonable fee to be determined by the board.

C. Each facility that engages in wholesale drug distribution must undergo an inspection by the board or a third party working on behalf of the board for the purpose of inspecting the wholesale drug distribution operations prior to initial licensure and periodically thereafter in accordance with a schedule to be determined by the board but not less than once every three (3) years. Manufacturing facilities located outside of this state are exempt from inspection by the board if the manufacturing facilities are currently registered with the food and drug administration in accordance with Section 510 of the federal act.

D. All wholesale distributors must publicly display or have readily available all licenses and the most recent inspection report administered by the board.

E. Changes in any information in this section shall be submitted to the board or to the third party working on behalf of the board within thirty (30) days of such change unless otherwise noted.

F. Information submitted by the wholesale drug distributor to the board or the third party working on behalf of the board that is considered trade secret or proprietary information as defined under this states privacy and trade secret/proprietary statutes shall be maintained by the board or the third party working on behalf of the board as private or trade secret proprietary information and be exempt from public disclosure.

G. The board shall have the authority to recognize a third party to accredit and inspect wholesale distributors.

H. The board may license by reciprocity, a wholesale distributor that is

licensed under the laws of another state if:

(1) the requirements of that state are deemed by the board to be substantially equivalent, or;

(2) the applicant is accredited by a third party recognized by the board.

I. Any applicant that is denied accreditation described under Subsection H 16.19.8.9 NMAC shall have the right of review of the accreditation body's decision, by:

(1) the board; and

(2) the accreditation body.

J. The board approved accreditation body shall ensure that the proprietary information obtained during the accreditation process remains confidential and privileged.

K. The board may waive a requirement of this chapter for wholesale distributors that have obtained and maintain a board approved accreditation.

[16.19.8.9 NMAC - Rp, 16.19.8.9 NMAC, 12-02-09]

16.19.8.10 M I N I M U M QUALIFICATIONS:

A. The board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the state:

(1) any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

(2) any felony convictions of the applicant under federal, state or local law;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application made in connection with prescription drug manufacturing or prescription drug distribution;

(5) suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with licensing requirements under previously granted licenses, if any;

(7) compliance with requirements to maintain or make available to the board or to federal, state, or local law enforcement officials those records required under this section; and

(8) any findings by the board that the applicant has violated or been disciplined by a regulatory agency in any state for violating and federal, state, or local laws relating to drug or device wholesale

distribution;

(9) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

B. The board shall consider the results of a criminal and financial background check of the applicant, including but not limited to all key personnel involved in the operations of the wholesaled distributor, including the designated representative responsible for facility operations, purchasing, inventory control and the person or persons they report to, all company officers, key management, principals, and owners with ten percent (10%) or greater ownership interest in the company (applying to non-publicly held companies only) to determine if an applicant or others associated with the ownership, management or operations of the wholesale distributor have committed criminal acts that would constitute grounds for denial of licensure. The background check will be conducted in compliance with any applicable state and federal laws, at the applicant's expense and will be sufficient to include all states residence since the person has been an adult. Manufacturers and packagers, licensed by the Federal Food and Drug Administration shall be exempt from criminal and financial background checks.

C. The applicant shall provide and attest to a statement providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts.

D. The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.

E. Request for an alternative reduced wholesale license fee: The board shall collect the full license fee as set by the board unless the board determines that collection of the license fee would be inconsistent with the public interest. The applicant/petitioner shall provide the board with any information necessary to make that determination including:

(1) business/organization profit status under federal and state code;

(2) impact on the health and safety of New Mexico citizens;

(3) volume of distribution in New Mexico;

(4) sole source of dangerous drugs; and

(5) financial hardship for applicant/registrant.

[16.19.8.10 NMAC - Rp, 16.19.8.10 NMAC, 12-02-09]

16.19.8.11 PERSONNEL: As a condition of receiving and retaining a wholesale drug distributor license, the licensee shall require each person employed in any prescription drug wholesale distribution activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained by law. Each person that is issued an initial or renewal license as a wholesale distributor whether in state or out of state must designate in writing on a form required by the board a person for each facility to serve as the designated representatives of the wholesale distributor.

A. To be certified as a designated representative a person must:

(1) submit an application on a form furnished by the board and provide information that includes but is not limited to;

(a) information required to complete the criminal and financial background checks required under Subsection B of 16.19.8.10 NMAC;

(b) date and place of birth;

(c) occupations, positions of employment and offices held during the past seven (7) years;

(d) principal business and address of any business corporation or other organization in which each such office of the person was held or in which each such occupation or position of employment was carried on;

(e) whether the person during the past seven (7) years has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating and state or federal laws regulating the possession, control or wholesale distribution of prescription drugs or devices, together with details of such events;

(f) whether the person has been during the past seven (7) years, the subject of any proceeding for the revocation of any professional or business license or any criminal violation and if so, the nature of the proceeding and the disposition of the proceeding;

(g) description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven (7) years, which manufactured, administered, prescribed, wholesale distributed or stored prescription drugs and devices in which such businesses were names as a party in a lawsuit;

(h) description of any criminal offense (not including minor traffic

violations) of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere; if the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of the criminal offense, the applicant must, within fifteen (15) days after the disposition of the appeal, submit to the board a copy of the final written order of disposition;

(i) photograph of the person taken within the previous year under procedures as specified by the board;

(j) name, address, occupation, date and place of birth for each member of the person's immediate family, unless the person is employed by a wholesale distributor that is a publicly held company; as used in this subparagraph, the term "member of the immediate family" includes the person's spouse(s), children, parents, siblings, the spouses of the person's children and the spouses of the person's siblings; and

(k) any other information the board deems relevant;

(2) have a minimum of two years of verifiable full-time managerial or supervisory experience in a pharmacy or wholesale distributor licensed in this state or another state, where the person's responsibilities included but were not limited to recordkeeping, storage and shipment of prescription drugs;

(3) may serve as the designated representative for only one wholesale distributor at any one time, except where more than one licensed wholesale distributor is co-located in the same facility and such wholesale distributors are members of an affiliated group as defined in Section 1504 of the Internal Revenue Code;

(4) be actively involved in and aware of the actual daily operations of the wholesale distributor;

(a) employed full-time in a managerial position by the wholesale distributor;

(b) physically present at the wholesale distributor during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation or other authorized absence;

(c) aware of and knowledgeable about all policies and procedures pertaining to the operations of the wholesale distributor.

B. The criminal and financial information collected pursuant to this section shall be made available only to the board, a third party recognized by the board and to state and federal law enforcement officials. The board and a third party recognized by the board shall make provisions for protecting the confidentiality of the information collected under this section.

C. Each licensed wholesale distributor located outside of this state that wholesale distributes prescription drugs in this state shall designate a registered agent in this state for service of process. Any licensed wholesale distributor that does not so designate a registered agent shall be deemed to have designated the secretary of state of this state to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed wholesale distributor growing out of or arising from such wholesale distribution. A copy of any such service or process shall be mailed to such wholesale distributor by the board by certified mail, return receipt requested, postage prepaid, at the address such licensed wholesale distributor has designated on its application for licensure in this state. If any such wholesale distributor is not licensed in this state, service on the Secretary of State only shall be sufficient service.

D. A designated representative must complete training programs that address applicable state and federal laws and are provided by qualified in-house specialists, outside counsel or counseling specialists with capabilities to help ensure compliance.

[16.19.8.11 NMAC - Rp, 16.19.8.11 NMAC, 12-02-09]

16.19.8.12 VIOLATIONS AND

PENALTIES: The board shall have the authority to suspend or revoke any licenses granted under this part on the grounds established by law or regulations; and may impose fines or civil penalties if allowed by law.

[16.19.8.12 NMAC - Rp, 16.19.8.12 NMAC, 12-02-09]

16.19.8.13 M I N I M U M REQUIREMENTS FOR THE STORAGE AND HANDLING OF PRESCRIPTION DRUGS AND FOR THE ESTABLISHMENT AND MAINTENANCE OF PRESCRIPTION DRUG DISTRIBUTION RECORDS BY WHOLESALE DRUG DISTRIBUTORS AND THEIR OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES:

A. Facilities. All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security;

(3) have a quarantine area for storage of prescription drugs that

are outdated, damaged, deteriorated, misbranded, counterfeit or suspected of being counterfeit or adulterated, otherwise unfit for distribution or wholesale distribution or that are in immediate or sealed, secondary containers that have been opened;

(4) be maintained in a clean and orderly condition; and

(5) be free from infestation by insects, rodents, birds, or vermin of any kind; and

(6) be a commercial location and not a personal dwelling or residence; and

(7) provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information; and

(8) provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting or diversion of prescription drugs or devices; and

(9) controlled substances must be isolated from non-controlled substance drugs and stored in a secure area in accordance with DEA security requirements and standards.

B. Security and anti-counterfeiting. All facilities used for wholesale drug distribution shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) The outside perimeter of the premises shall be well-lighted.

(3) Entry into areas where prescription drugs are held shall be limited to authorized personnel.

(4) All facilities shall be equipped with an alarm system to detect entry after hours.

(5) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(6) All facilities shall be equipped with a security system that will provide suitable protection against, detect and document any instances of theft, diversion or counterfeiting.

(7) Authentication of pedigrees:

(a) wholesale distributors that acquire prescription drugs from other wholesale distributors outside the normal distributors channel shall authenticate the pedigree of all such prescription drugs back to the authorized distributor of record, unless an electronic pedigree and track and trace system, which documents each transaction is in place;

(b) authorized distributors of record from whom other wholesale

distributors have acquired prescription drugs outside of the normal distribution channel, shall cooperate with pedigree authentication efforts and verify the provided information in a timely manner;

(c) each authorized distributor of record that has distributed a prescription drug for which an acquiring wholesale distributor is conducting a pedigree authentication, shall verify for the acquiring wholesale distributor, upon request, detailed information regarding its acquisition of the prescription drug, including:

(i) date of acquisition;
(ii) lot number or control number;

(iii) acquisition invoice number; and

(iv) name, address, telephone number and email address (if available) of the manufacturer or wholesale distributor from which the prescription drug was acquired.

(d) if the authorized distributor of record is unable to authenticate the pedigree of the prescription drug, that wholesale distributor shall contact the manufacturer in an attempt to authenticate the pedigree, in so doing;

(i) the authorized distributor of record must provide the manufacturer with all relevant information it possesses; and

(ii) the manufacturer must confirm or deny the information provided in a timely manner;

(e) if the wholesale distributor attempting to authenticate the pedigree of the prescription drug is unable to authenticate the pedigree, the wholesale distributor shall quarantine the prescription drug and file a report with the board and FDA within three (3) business days after completing the attempted authentication; and

(f) if the wholesale distributor attempting to authenticate the pedigree of the prescription drug is able to authenticate the pedigree, the wholesale distributor shall maintain records of the authentication for three (3) years and shall produce them to the board upon request.

C. Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or in compliance with standards in the current edition of an official compendium, such as the United States Pharmacopeia-National Formulary (USP/NF).

(1) If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices or logs shall be utilized to document proper storage of prescription drugs.

(3) The record keeping requirements in Subsection F of 16.19.8.13 NMAC shall be followed for all stored prescription drugs.

D. Examination of Materials.

(1) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting, contraband, suspected of being counterfeit or contraband, or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

(3) Upon receipt, a wholesale distributor must review records for the acquisition of prescription drugs or devices for accuracy and completeness, considering the total facts and circumstances surrounding the transactions and the wholesale distributors involved.

(4) The record keeping requirements in Subsection F of 16.19.8.13 NMAC shall be followed for all incoming and outgoing prescription drugs.

E. Returned, damaged, and outdated prescription drugs.

(1) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or other persons authorized to administer or dispense drugs or for a pharmacy's intracompany warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy. Returns of expired, damaged, recalled or otherwise non-saleable pharmaceutical products shall be distributed by the receiving wholesale distributor only either to the original manufacturer, manufacturer's co-licensed partner, or any affiliated group of either or a third party returns processor. The returns or exchanges of prescription drugs (saleable or otherwise) including any redistribution by a receiving wholesaler, shall not be subject to the pedigree requirements of this chapter, so long as they are exempt from the pedigree requirement of the FDA's currently applicable Prescription Drug Marketing Act guidance.

(2) Prescription drugs that are outdated, damaged, deteriorated, misbranded, counterfeit, suspected

counterfeit or adulterated shall be quarantined and physically separated from other prescription drugs until they are destroyed, surrendered to the appropriate authority or returned to their supplier.

(3) Any prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs until they are either destroyed or returned to the supplier.

(4) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(5) When prescription drugs are adulterated, counterfeited, contraband, misbranded or suspected of being adulterated, counterfeit, contraband or misbranded, notice of the adulteration, counterfeiting, contrabandage, misbranding or suspected adulteration, counterfeiting, contrabandage or misbranding shall be provided within three (3) business days of that determination to the board, FDA, manufacturer, manufacturer's co-licensed partner, any affiliated group of either or wholesale distributor from which they were acquired. Any prescription drug returned to a manufacturer or wholesale distributor shall be kept under proper conditions for storage, handling, transport, shipment and documentation showing that proper conditions were maintained and shall be provided to the manufacturer or wholesale distributor to which the prescription drugs are returned.

(6) Any prescription drug whose immediate or sealed outer or secondary containers or product labeling are adulterated, misbranded, counterfeited, contraband or suspect of being counterfeit or contraband shall be quarantined and physically separated from other prescription drugs until it is destroyed or returned to the manufacturer, manufacturer's co-licensed partner, any affiliated group of either or wholesale distributor from which it was acquired. When the immediate or sealed outer or secondary containers or product labeling of any prescription drugs are adulterated, misbranded, counterfeited, contraband or suspect of being counterfeit,

or contraband, notice of the adulteration, misbranding, counterfeiting, contrabandage or suspected counterfeiting or contrabandage shall be provided within three (3) business days of that determination to the board, FDA, manufacturer or wholesale distributor from which it was acquired.

(7) The record keeping requirements in Subsection F of 16.19.8.13 NMAC shall be followed for all outdated, damaged, deteriorated, misbranded, counterfeit, suspected counterfeit or adulterated prescription drugs.

(8) Contraband, counterfeit or suspected to be contraband or counterfeit drugs, other evidence of criminal activity and accompanying documentation shall be retained and not destroyed until its disposition is authorized by the board and FDA.

(9) The shipping, immediate or sealed outer or secondary container or product labeling and accompanying documentation, suspected of or determined to be counterfeit, contraband or otherwise fraudulent shall not be destroyed until its disposition is authorized by the board and FDA.

F. Record keeping.

(1) Wholesale drug distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records shall include the following information:

(a) the identity and quantity of the drugs received and distributed or disposed of; and

(b) the dates of receipt and distribution or other disposition of the drugs;

(c) the name, location and license number of the business, health care practitioner or other entity appropriately licensed to possess, dispense, distribute, administer or destroy prescription drugs;

(d) manufacturer's representatives must maintain receipt and disposition records for all dangerous drugs in compliance with the requirements of the Federal Prescription Drug Marketing Act of 1987.

(2) Inventories and records shall be made available for inspection and photocopying by authorized inspectors employed by the board and authorized federal, state or local law enforcement agency officials for a retention period of three (3) years following disposition of the drugs.

(3) Registrants must petition the board for a waiver in order to store the required records at an alternate location. The registrant must provide the board, in writing, of the address (mailing and street), telephone number, and the name and title of the person designated by the registrant as the custodian of the records. Any changes of custodian or location of records must be reported in

writing to the board within fifteen (15) actual days. Any records approved by waiver to be stored at an alternate location must be available within two (2) working days of a request by authorized board personnel or officials of a federal, state, or local law enforcement agency.

(4) Pedigrees shall be provided to another wholesale distributor or pharmacy for prescription drugs that leave the normal distribution channel before wholesale distribution to such other wholesale distributor, pharmacy or other person authorized by law to prescribe and dispense prescription drugs. The pedigree shall minimally include the following information for each transaction:

(a) the source of the prescription drug(s), including the name and principal address of the seller;

(b) the proprietary and established name of the prescription drug, the amount of the prescription drug, its dosage form and dosage strength, the date of the purchase, the sales invoice number, container size, number of containers, expiration date(s), and lot number(s) or control number(s) of the prescription drug;

(c) the business name and address of each owner of the prescription drug and its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the prescription drug;

(d) information that states that the wholesale distributor has conducted due diligence of the wholesale distributor(s) from which the wholesale distributor purchased; and

(e) a certification from the designated representative of the wholesale distributor that the information contained therein is true and accurate under penalty of perjury;

(f) if electronic pedigree or electronic files are maintained they shall be maintained consistent with 21 CFR 203.60, including any amendments thereto.

(5) Wholesale distributors shall report any theft, suspected theft, diversion or other significant loss of any prescription drug or device to the board and FDA and where applicable, to the DEA.

G. Written policies and procedures. Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories; wholesale drug distributors shall include in their written policies and procedures the following:

(1) a procedure whereby the oldest approved stock of a prescription drug product

is distributed first; the procedure may permit deviation from this requirement, if such deviation is temporary and appropriate;

(2) a procedure to be followed for handling recalls and withdrawals of prescription drugs; such procedure shall be adequate to deal with recalls and withdrawals due to:

(a) any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the state licensing agency;

(b) any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(c) any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design;

(3) a procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

(4) a procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed; this procedure shall provide for written documentation of the disposition of outdated prescription drugs; this documentation shall be maintained for 3 years after disposition of the outdated drugs;

(5) a procedure for the destruction of outdated prescription drugs in accordance with state and federal laws, including all necessary documentation, maintained for a minimum of three (3) years, and the appropriate witnessing of the destruction of outdated prescription drugs in accordance with all applicable federal and state requirements;

(6) a procedure for the disposing and destruction of containers, labels and packaging to ensure that the containers, labels, and packaging cannot be used in counterfeiting activities, including all necessary documentation, maintained for a minimum of three (3) years, and the appropriate witnessing of the destruction of any labels, packaging, immediate containers or containers in accordance with all applicable federal and state requirements;

(7) a procedure for identifying, investigating and reporting significant prescription drug inventory discrepancies involving counterfeit, suspect of being counterfeit, contraband or suspect of being contraband, in the inventory and reporting of such discrepancies within ten (10) business days to the board and appropriate federal or state agency upon discovery of such discrepancies;

(8) a procedure for reporting criminal or suspected criminal activities involving the inventory of prescription drug(s) to the board, FDA as required by the agency, and if applicable, DEA, within three (3) business days;

(9) a procedure for conducting, authentication of pedigrees in accordance with Subsection B of 16.19.8.13 NMAC (Security and anti-counterfeiting) and standards adopted by the board;

(10) a procedure that ensures all common carriers contracted with or utilized by the wholesale distributor conduct a criminal background check and drug screen of the employees whose responsibilities include the known handling of prescription drugs;

(11) a procedure for conducting periodic assessments of the security provisions of common carriers contracted with or utilized by the wholesale distributor that at a minimum must specify that vehicles must be secured by locks on all doors and windows when the driver is not present, there shall be no unapproved stops during the delivery route and that the vehicle must not be left running in the absence of the driver;

(12) a procedure or set procedures designated to address high-risk deliveries that may require the common carriers contracted with or utilized by the wholesale distributor to make deliveries only to highly-visible, well-lit locations during certain prescribed time periods agreed upon with the customer and the use of varied routing.

H. Responsible persons. Wholesale drug distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

I. Compliance with federal, state, and local law: wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(1) Wholesale drug distributors shall permit board authorized personnel and authorized federal, state and local law enforcement officials, to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

(2) Wholesale drug distributors that deal in controlled substances shall register with the board and with the DEA, and shall comply with all applicable state, local and DEA regulations.

(3) A licensed wholesale drug

distributor may distribute only to persons who are licensed to possess dangerous drugs.

(4) Controlled substances may only be distributed or delivered to persons in this state who are registered by the board and the DEA to possess controlled substances.

J. Salvaging and reprocessing. Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing including Subsection G of 16.19.8.13 NMAC.

[16.19.8.13 NMAC - Rp, 16.19.8.13 NMAC, 12-02-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department repeals its rule entitled Operational Bylaws of the Educational Standards Commission (6.2.2 NMAC), filed October 31, 2000, effective November 13, 2009.

The New Mexico Public Education Department repeals its rule entitled Operational Bylaws of the Instructional Material Commission (6.2.5 NMAC), filed November 1, 2000, effective November 13, 2009.

The New Mexico Public Education Department repeals its rule entitled Operational Bylaws of the Nonpublic Schools Commission (6.2.6 NMAC), filed June 1, 2001, effective November 13, 2009.

The New Mexico Public Education Department repeals its rule entitled Interscholastic Student Activities (6.13.3 NMAC), filed December 15, 2000, effective November 13, 2009.

The New Mexico Public Education Department repeals its rule entitled Public School Accountability System for Schools Rated Probationary (6.19.2 NMAC), filed March 19, 2002, effective November 13, 2009.

The New Mexico Public Education Department repeals its rule entitled Regional Center Cooperatives (6.23.2 NMAC), filed June 1, 2001, effective November 13, 2009.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.10.4 NMAC, Sections 1, 2, 3, 6, 7 and 9, effective November 13, 2009.

6.10.4.1 ISSUING AGENCY: [State Board of Education] Public Education

Department

[12-31-98, 07-30-99; 6.10.4.1 NMAC - Rn, 6 NMAC 1.5.2.1, 12-29-00; A, 11-13-09]

6.10.4.2 SCOPE: This [regulation] rule applies to local school boards and school districts. [12-31-98; 6.10.4.2 NMAC - Rn, 6 NMAC 1.5.2.2, 12-29-00; A, 11-13-09]

6.10.4.3 STATUTORY AUTHORITY: This [regulation] rule is adopted pursuant to Sections 22-2-1 and 22-2-2, NMSA 1978.

[12-31-98; 6.10.4.3 NMAC - Rn, 6 NMAC 1.5.2.3, 12-29-00; A, 11-13-09]

6.10.4.6 OBJECTIVE: The purpose of this [regulation] rule is to establish procedures for the disenrollment of students who are not legally enrolled in school.

[12-31-98; 6.10.4.6 NMAC - Rn, 6 NMAC 1.5.2.6, 12-29-00; A, 11-13-09]

6.10.4.7 DEFINITIONS: As used in this [regulation] rule the following words, terms and phrases shall have the meaning set forth in this paragraph:

A. "Administrative authority" means the local school district superintendent, a principal or the designee of such person.

B. "Disenrollment" means discontinuance of the student's attendance at school.

C. "Enrollment" means registration as a student on the rolls of the local school district.

D. "Invalid enrollment" refers to an enrolled student or a conditionally enrolled student who has not met the requirements of law for enrollment in school, either as to age, residence, immunization, or other reasons, or has not complied with conditional enrollment requirements.

E. "Mailed" means deposited in the mail or delivered for transmission by any other means of communication with postage or cost of transmission provided for and addressed to the latest address shown by school records.

F. "School" means public school.

G. "School day" means each day of the school year during which the membership of students is computed pursuant to the Public School Finance Act.

H. "Student" means a "qualified student" eligible to attend public school, as that term is defined in Section 22-8-2, NMSA 1978.

[12-31-98; 6.10.4.7 NMAC - Rn, 6 NMAC 1.5.2.7, 12-29-00; A, 11-13-09]

6.10.4.9 PROCEDURE: Where the administrative authority has reason to

believe a student is enrolled under an invalid enrollment the administrative authority shall take the following action:

A. Preliminary notice of contemplated action of disenrollment. The administrative authority shall give a preliminary notice of contemplated action of disenrollment to the student, through his/her parent or guardian, of the contemplated disenrollment and the reasons therefore. The preliminary notice shall be in writing, and mailed to the student not later than ten (10) school days before the notice of disenrollment is to be mailed. The preliminary notice shall state that: (1) the student has a right to respond, either in writing or in person, to the administrative authority before the date of the contemplated action of disenrollment, and (2) the student may attempt to resolve the matter informally by presenting adequate evidence to the administrative authority to refute the alleged reasons for the contemplated action of disenrollment.

B. Stay of proceedings. Where the question of the student's enrollment is under review by an administrative agency in the state of New Mexico or any court of competent jurisdiction, and written documentation has been filed with the administrative authority establishing the pendency of the action, all proceedings under this [regulation] rule shall be stayed pending final determination of the question by that agency or court.

C. Notice of disenrollment. Where the student has not presented satisfactory evidence to cure the invalid enrollment and has been afforded notice as required by Subsection A of Section 6.10.4.9 NMAC above, the administrative authority shall give written notice to the student, through his/her parent or guardian, that the student will be disenrolled. The notice of disenrollment shall be mailed ten (10) school days after the mailing of the preliminary notice of contemplated action of disenrollment. The notice of disenrollment must include a copy of this [regulation] rule and must advise the student, through his/her parent or guardian, of the following.

(1) Subject to the procedure in Subsection C, Paragraph (2) of Section 6.10.4.9 below, if satisfactory evidence to refute the alleged reasons for the contemplated action of disenrollment is not submitted to the administrative authority within ten (10) school days from the date of mailing of the notice of disenrollment, the student will be disenrolled.

(2) The student may, at any time within ten (10) school days after the date of mailing of the notice of disenrollment, present the administrative authority with an oral or written request for a hearing on the matter.

(a) The hearing shall be held

within five (5) school days after receipt of a request for hearing.

(b) The student may appear at the hearing, with or without counsel, to refute the alleged reasons for the disenrollment.

(c) The student may present witnesses or evidence at the hearing, as well as question any witnesses supporting disenrollment.

(3) Within five (5) school days after the hearing, the hearing officer shall issue and mail to the student, through his/her guardian, the decision setting forth his/her decision and the reasons therefore.

(4) If the hearing officer decides in favor of the student, the matter shall be closed. If the hearing officer decides against the student, the student shall be disenrolled from school five (5) school days from the date of mailing of the decision.

(5) If no request for a hearing is received within the time provided, the student shall be disenrolled from school and shall be permitted to re-enroll only when all legal requirements for enrollment are met.

D. Hearing officer. The administrative authority may designate one or more of its staff to act as hearing officer for disenrollment matters; who, upon referral of the case from the administrative authority, shall follow the procedures set forth herein to afford the student and his/her parent or guardian due process.

E. Hearing procedure. The hearing shall be set within five (5) school days after an oral or written request for hearing is received by the administrative authority.

(1) The administrative authority/hearing officer shall conduct the hearing informally but with dignity, firmness and fairness appropriate to the importance of the proceedings.

(2) Written minutes of the proceedings shall be kept. A verbatim transcript shall not be required.

(3) The hearing shall be conducted to afford the student due process, and shall provide:

(a) an opportunity for the student and his/her parent or guardian to respond at the hearing;

(b) the right to present evidence;

(c) the right to confront adverse witnesses;

(d) the right of cross examination;

(e) the right to be represented by counsel;

(f) the right to have a decision based solely on the applicable legal rules and the evidence presented at the hearing.

(4) Within five (5) school days after the hearing, the hearing officer shall prepare and mail to the student, through his/her parent or guardian, a written decision and the reasons therefore.

[12-31-98; 6.10.4.9 NMAC - Rn, 6 NMAC

1.5.2.9, 12-29-00; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.10.5 NMAC, Sections 1, 2, 3, and 6. Definitions are added to Section 7 and Section 8 is replaced in its entirety. The part name is also amended. The amendments are effective November 13, 2009.

~~PART 5 [VARIABLE SCHOOL CALENDAR APPLICATION REVIEW AND REPORTING PROCESS]~~ SCHOOL CALENDAR REQUIREMENTS

6.10.5.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[12-31-98, 07-30-99; 6.10.5.1 NMAC - Rn, 6 NMAC 11.4.1, 12-29-00; A, 11-13-09]

6.10.5.2 SCOPE: [This regulation applies to local boards of education.] This rule applies to school districts and charter schools.

[12-31-98; 6.10.5.2 NMAC - Rn, 6 NMAC 11.4.2, 12-29-00; A, 11-13-09]

6.10.5.3 STATUTORY AUTHORITY: This [regulation] rule is promulgated pursuant to Sections ~~[22-2-1, 22-2-2]~~ 9-24-8, 22-2-1, 22-2-2, 22-2-8.1 and 22-22-1 et seq. NMSA 1978.

[12-31-98; 6.10.5.3 NMAC - Rn, 6 NMAC 11.4.3, 12-29-00; A, 11-13-09]

6.10.5.6 OBJECTIVE: [This regulation establishes criteria for the establishment of a variable school calendar in a school district pursuant to the Variable School Calendar Act, Sections 22-22-1 to 22-22-6 NMSA 1978.] This rule establishes criteria for establishing a variable school calendar pursuant to the Variable School Calendar Act (Sections 22-22-1 to 22-22-6 NMSA 1978) and for determining a school year.

[12-31-98; 6.10.5.6 NMAC - Rn, 6 NMAC 11.4.6, 12-29-00; A, 11-13-09]

6.10.5.7 DEFINITIONS: [Reserved]

A. "Condensed year calendar" means a calendar for a school district, school or charter school operating on a four-day schedule each week.

B. "Department" means the public education department.

C. "Local board" means a board of education of a school district or a governing body of a charter school.

D. "Secretary" means the secretary of the New Mexico public

education department.

E. "Variable school calendar" means a calendar for school district, school or charter school operations extending over a ten, eleven or twelve-month period or portions thereof in excess of nine months, which permits student attendance on a staggered schedule.

[6.10.5.7 NMAC - N, 11-13-09]

6.10.5.8 REQUIREMENTS:

[Any local board of education (local board) planning to operate under a variable school calendar must adhere to the following requirements:

A. Application procedures:
To operate under a variable school calendar, the local board must file an application with the state department of public education ("department") on or before July 1st of the year prior to implementation:

(1) The local board's application must include the following:

(a) the proposed variable school calendar, with implementation schedule, must begin on or after July 1st of the school year and must end prior to June 30th of the school year;

(b) an identification of the schools, by grade level, to be operated under the calendar;

(c) a needs assessment which addresses community and area demographics, student achievement and related educational data, and a cost analysis;

(d) a description of planning activities which must document a public hearing(s) that address the anticipated impact of the calendar change upon the school district, family, community and other agencies;

(e) an assessment of the impact of the proposed variable school calendar on: facilities, capital needs, operational budget transportation services, personnel needs, staffing patterns, and instructional programs within the school district;

(f) an evaluation instrument designed to assess the effectiveness of the variable school calendar shall include the components listed in Subsection A, Paragraph 1 of Section 6.10.5.8 NMAC and the effect(s) of the implementation of the variable school calendar upon optimum and maximum utilization of school facilities; optimum and maximum utilization of personnel, the education of all students, and upon families;

(g) verification of substantial community support for implementation of the variable school calendar;

(h) the rationale justifying the local board's decision to implement a variable school calendar shall be based on the needs assessment, planning activities conducted by the local board, public hearing(s) held, and other information as may be deemed

pertinent by the local board:

(2) The applicant shall provide any other information requested by the department to ensure compliance with the variable school calendar requirements:

B. Application review:

(1) The local board's application to operate under a variable school calendar will be reviewed by the department. The review procedures will include but not necessarily be limited to an evaluation of the following components:

(a) completeness of the total application;

(b) consistency of the information provided in the application; and

(c) quality of the needs assessment, planning, facilities, capital needs, transportation, personnel, program, fiscal and evaluation and accountability components of the local board's application:

(2) The department will advise the state board of its findings.

(3) Prior to taking action on the request, the state board will conduct at least one (1) public hearing in the district.

(4) The local board will be notified of the state board's approval or disapproval of its application to operate under a variable school calendar by December 15th of the application year; provided, however, that if size adjustment program units are involved, the local board will be notified by November 1st of the application year.

C. Evaluation: The local board shall evaluate the implementation of the variable school calendar in accordance with the instrument required in Subsection A, Paragraph (1), Subparagraph (f) of Section 6.10.5.8 NMAC of this regulation. The evaluation shall be conducted on an annual basis and shall be submitted to the department for review no later than (60) days after the end of the school year as established by the variable school calendar:

D. Reporting: In accordance with Section 22-8-13(E) NMSA 1978, the membership reporting requirements are modified to provide that for schools or school districts operating under a variable school calendar, the fortieth day for reporting purposes will be established by the school district in conjunction with the department; provided, however, that the fortieth day must fall between August 26th and November 15th of the variable school calendar year:

(1) All enrolled students, regardless of calendar, and all persons with an employment contract or professional services contract, regardless of calendar, will be reported:

(2) The forty-day report will be submitted to the department within five days of the close of the reporting period.

E. Variable school calendar discontinuance: Upon approval by the state

board of a local board's request to operate under a variable school calendar, the school or school district shall continue to operate under the approved variable school calendar until such time as the local board, by resolution, requests the state board to approve the discontinuance of the variable school calendar and such request is approved by the state board.]:

While department approval is not required, any local board planning to operate under a condensed year or variable school calendar shall justify a decision to implement such a calendar based upon the results of public input and other considerations as set forth in this section.

A. Approval procedure: To operate under a condensed year or variable school calendar, the local board shall, at a duly noticed public meeting held prior to the condensed year or variable school calendar's implementation date, declare in a detailed written resolution its intention to operate under a condensed year or variable school calendar:

(1) The local board's approval procedure shall include the following:

(a) an identification of the schools, by grade level, to be operated under the calendar;

(b) public input at a public meeting on how student and school achievement and financial issues would be impacted by the proposed condensed year or variable school calendar;

(c) public input at a public meeting on the anticipated impact of the proposed condensed year or variable school calendar upon the school district, charter school, family and community;

(d) public input at a public meeting on the impact of the proposed condensed year or variable school calendar on: facilities, capital needs, operational budget, transportation services, personnel needs, staffing patterns, and instructional programs within the school district or charter school;

(e) verification of substantial community support for implementation of the proposed condensed year or variable school calendar; and

(f) public input at a public meeting on how the proposed condensed year or variable school calendar will ensure that a school year will consist of the minimum number of full instructional days required by Paragraphs (1) and (2) of Subsection B of 6.10.5.8 NMAC.

(2) Any resolution adopted by the local board to implement a condensed year or variable school calendar shall contain an assurance that each of the criteria set forth in Subsection A of 6.10.5.8 NMAC have been satisfied.

B. Length of school day beginning with the 2010-2011 school year:

(1) Beginning with the 2010-2011

school year, school districts and charter schools operating under a condensed year calendar shall operate under a calendar consisting of at least one hundred fifty full instructional days per year exclusive of any release time for in-service training as follows:

(a) if in kindergarten for half-day programs, two and one-half hours per day or for full-day programs, five and one-half hours per day;

(b) if in grades one through six, five and one-half hours per day for a total of nine hundred ninety hours per year; and

(c) if in grades seven through twelve, seven hours and twelve minutes per day for a total of one thousand eighty hours per year.

(2) Beginning with the 2010-2011 school year, school districts and charter schools that operate on a regular or variable calendar, shall operate under a calendar consisting of at least one hundred eighty full instructional days per year exclusive of any release time for in-service training.

(3) Students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(a) if in kindergarten for half-day programs, two and one-half hours per day or, for full-day programs, five and one-half hours per day;

(b) if in grades one through six, five and one-half hours per day; and

(c) if in grades seven through twelve, six hours per day.

(4) School districts and charter schools may establish a school year or length of school days in excess of the minimum requirements established in this section provided that they do so only after a duly noticed public meeting held at which public input is permitted. Charter schools shall not be required to obtain permission from their authorizer to extend their school year or length of school days but shall provide them with written notice of the proposed change prior to implementation. Budget implications should be carefully addressed when consideration is given to exceeding the minimum requirements.

C. Except as provided in Paragraph (4) of Subsection B of 6.10.5.8 NMAC, days or parts of days that are lost to weather, in-service training or other events that are not school-directed programs shall be made up so that students receive a full instructional school year.

D. Upon approval of scheduling by the school principal, teachers may:

(1) use up to thirty-three hours of the full-day kindergarten program for home visits or for parent- teacher conferences;

(2) use up to twenty-two hours of grades one through six programs for home visits or for parent- teacher conferences;

(3) use up to twelve hours of grades seven through twelve for consultation with parents or to develop student next-step plans.

E. Length of school day requirements during the 2009-2010 school year shall be satisfied by complying with the minimum requirements set forth in Section 22-2-8.1, NMSA 1978 as they existed in law prior to the 2009 changes that contained a delayed-year effect. School districts and charter schools may, however, voluntarily commence complying with the new requirements set forth in Subsection B of 6.10.5.8 NMAC above.

F. The secretary may, on a case by case basis, waive the minimum length or number of school days where such minimums would create undue hardships provided that the school year is adjusted to ensure that students in the requesting school district or charter school receive the same total instructional time as students in the same grade elsewhere in the state. A hardship shall include but not be limited to:

(1) severe and prolonged acts of nature that render travel dangerous or impractical;

(2) natural disasters that affect a community after which rescue, repair and grieving are critical to the community's recovery;

(3) community or statewide health emergencies as where warnings about pandemics or epidemics have been issued by the department of health or the department;

(4) the passing or prolonged illness of key school staff;

(5) violent or other disruptive acts committed on school property that necessitate a lockdown or closure of a school.

[12-31-98; 6.10.5.8 NMAC - Rn, 6 NMAC 11.4.8, 12-29-00; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.10.6 NMAC, Sections 1, 2, 3 and 6, effective November 13, 2009.

6.10.6.1 ISSUING AGENCY: [State Board of Education] Public Education Department
[12-31-98, 07-30-99; 6.10.6.1 NMAC - Rn, 6 NMAC 1.3.1.1, 12-29-00; A, 11-13-09]

6.10.6.2 SCOPE: This [regulation] rule applies to local school boards, local school districts, and public schools.
[12-31-98; 6.10.6.2 NMAC - Rn, 6 NMAC 1.3.1.2, 12-29-00; A, 11-13-09]

6.10.6.3 S T A T U T O R Y

AUTHORITY: This [regulation] rule is adopted pursuant to Sections [22-1-8 and] 22-2-1 and 22-21-2, NMSA 1978.

[12-31-98; 6.10.6.3 NMAC - Rn, 6 NMAC 1.3.1.3, 12-29-00; A, 11-13-09]

6.10.6.6 OBJECTIVE: This [regulation] rule is intended to define "legitimate educational purposes" as required by Section 22-1-8, NMSA 1978.
[12-31-98; 6.10.6.6 NMAC - Rn, 6 NMAC 1.3.1.6, 12-29-00; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.10.7 NMAC, Sections 1, 2, 3, 6, 7, 8, 9, 11, 12, 13 and 14 effective November 13, 2009.

6.10.7.1 ISSUING AGENCY: [State Board of Education] Public Education Department
[6.10.7.1 NMAC - N, 09-28-01; A, 11-13-09]

6.10.7.2 SCOPE: [~~All school districts and all individuals employed by or volunteering in school districts, other than student test-takers, who have access to standardized tests.~~] All school districts, charter schools, state educational institutions and bureau of Indian education schools that administer standardized tests, as well as their employees or volunteers who have access to those standardized tests.
[6.10.7.2 NMAC - N, 09-28-01; A, 11-13-09]

6.10.7.3 S T A T U T O R Y
AUTHORITY: Sections [22-1-6, 22-2-1, and 22-2-2,] 22-2-1, 22-2-2, 22-2C-4, 22-13-1.1 and 22-13-1.2, NMSA 1978.
[6.10.7.3 NMAC - N, 09-28-01; A, 11-13-09]

6.10.7.6 OBJECTIVE: [State Department of Public Education ("SDE")] The public education department ("PED") is required by statute to measure student achievement through standardized tests administered in [the school districts] public schools. These tests are also administered by agreement in state educational institutions and bureau of Indian education schools. To carry out this duty, the [SBE] PED hereby establishes uniform procedures for preparation, security, administration, and safeguarding of standardized tests [in the school districts] wherever administered.
[6.10.7.6 NMAC - N, 09-28-01; A, 11-13-09]

6.10.7.7 DEFINITIONS:
A. "Testing irregularity" means any circumstance within or beyond

the control of a school district that in the opinion of the [State Department of Public Education (“SDE”)] PED or a school district raises doubts about the propriety of standardized testing procedures, preparation materials, standardized testing administration, standardized testing security, student scores attained from standardized testing, or teacher or student conduct observed during standardized testing.

B. **“Standardized test”** means any nationally norm-referenced test, state or national performance assessment, state or national criterion-referenced assessment or state or national standards-based assessment that is required by law to be administered in all school districts and is required to be administered with standard procedures.

C. **“Standardized test material”** means a standardized test or any related items such as examiner guides, preparation materials, test security guides, answer sheets or booklets and any student notes, answers, or essays generated during the administration of a standardized test.

D. **“Nationally norm-referenced test”** means a timed test whose purpose is to measure student performance against a national norming group.

E. **“Criterion-referenced assessment”** means an assessment that is based upon identified criteria.

F. **“Standards-based assessment”** means a standardized assessment whose purpose is to measure student performance against state standards and benchmarks.

G. **“Performance assessment”** means an assessment based on an extended task which is a demonstration of student ability.

H. **“District test coordinator”** means the licensed school [instructor] personnel or administrator in a district with the overall responsibility for district handling, storing, distributing and recording such distribution by booklet or answer sheet number, collecting, and administering standardized tests, training school personnel in test security matters and proper administration procedures, and shall be that district’s superintendent unless another licensed school instructor or administrator is formally designated.

I. **“School test coordinator”** means the licensed school instructor or administrator in a school with the responsibility for handling, storing, distributing assessments for administration to test examiners and recording such distribution by booklet or answer sheet number, collecting, and administering standardized tests, training school personnel in test security matters and proper administration procedures within the school site, and shall be designated by the district’s

superintendent.

J. **“Test examiner”** means every licensed school instructor or administrator in a school district with the responsibility of administering tests under this [regulation] rule.

K. **“New Mexico statewide assessment program “ [“NMAP”] (“NMSAP”)** means the assessment program that is approved by the [State Board of Education] PED and designates the required standardized tests to be administered in New Mexico public school districts, charter schools and state educational institutions.

L. **“Test administration window”** means a specified period of time, as designated by the [SBE] PED assessment and evaluation unit, during which statewide tests must be administered.

M. **“Proctor”** means a designated, trained person(s) to assist the test administrator during the time of testing. [6.10.7.7 NMAC – N, 09-28-01; A, 11-13-09]

6.10.7.8 DISTRICT SUPERINTENDENT’S RESPONSIBILITY:

It shall be the responsibility of each school district superintendent to ensure that standardized tests are handled, stored, prepared for, and administered in accordance with this [regulation] rule and in accordance with any precautionary instructions provided with the tests.

A. The superintendent may designate one district test coordinator and additional school test coordinators for the purpose of delegating the duties necessary to carry out compliance with this [regulation] rule. The district test coordinator must attend standardized test training workshops provided by the [SDE] PED. The district test coordinator shall hold a valid [SBE] PED certified school instructor or administrator license, excluding licenses for substitutes, educational assistants, school nurses, and coaches.

B. Any such designation shall:

- (1) be in writing;
- (2) identify the name and title if any of the person(s) so delegated;
- (3) indicate the duration of their assignment which shall be no less than one nor more than three calendar years; and
- (4) indicate that this person(s) has been given a copy of this [regulation] rule together with any written district policies relating to standardized test preparation, administration and security.

[6.10.7.8 NMAC – N, 09-28-01; A, 11-13-09]

6.10.7.9 DISTRICT TEST COORDINATOR’S RESPONSIBILITY:

To produce valid results, standardized test

materials should be stored, handled, disposed of and administered in a uniform and secure manner. This requires adherence to training procedures and topics, test preparation procedures and administration practices that emphasize test security, compliance with test vendor legal, administration, handling, and disposal procedures, and adherence to the New Mexico [Code of Professional Responsibilities] Standards of Professional Conduct set forth at 6.60.2.9 NMAC. These practices are intended to apply to all individuals, other than the tested students themselves, who are expressly or implicitly given access to standardized tests. The district test coordinator shall attend semiannual workshops held by [SDE] PED in order to be trained and then shall provide training for all district personnel involved in test administration, preparation, and security. It shall be the responsibility of each school district’s test coordinator to, at a minimum, implement and carry out the following test material preparation, handling, storage, administration, and secure disposal practices.

A. In the absence of a written district policy that includes the following procedures, the district test coordinator shall develop a checklist and written procedure for storing and handling standardized test material whereby:

(1) standardized tests shall be counted, inventoried and stored in a secure area;

(2) space permitting, standardized test material should be stored in sealed containers in a secure area;

(3) standardized test material not stored in sealed containers shall be segregated, wrapped in clear or unclear paper, and sealed securely with packing tape bearing the sealing date and the initials of the person sealing it; and

(4) standardized test material, as directed by the [SDE] PED, shall be disposed of by either shredding or returning such materials to the test vendor.

B. In the absence of a written district policy that includes the following procedures, the district test coordinator shall develop a checklist and procedure for accessing standardized test material whereby:

(1) access to standardized test material shall be restricted, limited and controlled, with personnel having access designated by the district superintendent;

(2) records shall be maintained that identify the individual who removed a standardized test(s) or other standardized test material, the name of the standardized test(s) or standardized test material that was removed, how many standardized tests or standardized test materials were removed, the identifying number of the standardized test(s) or standardized test material removed,

and the date the standardized test(s) or standardized test material was removed;

(3) each standardized test material access record shall be maintained for at least five (5) calendar years and be made available for review by the [SDE] PED upon request;

(4) records similar to paragraph (2) of subsection B of section 9 of 6.10.7 NMAC above shall be maintained on the return of any standardized test material removed; and

(5) the district test coordinator shall inform all district teachers, aides, educational assistants, substitutes, volunteers, licensed and unlicensed office staff, and anyone else who is likely to come into contact with standardized testing material, of the need to maintain strict standardized test security by:

(a) developing and disseminating handouts to these individuals;

(b) offering in-service training to these individuals; and

(c) prior to and during a state-mandated assessment administration window, posting conspicuous signs near school copy machines warning that [SBE regulations] PED rules prohibit the copying of any portion of a standardized test including a student's answer, and any other standardized testing material.

C. In the absence of a written district policy that includes the following procedures, the district test coordinator shall develop a checklist, in-service training and a written procedure for administering standardized tests whereby:

(1) in-service training shall be provided to all persons who administer or proctor a standardized test, and no one shall be permitted to administer or proctor a standardized test without first completing training in accordance with timelines, topics, and materials designated by the [SDE] PED;

(2) only certified school instructors and administrators, excluding substitutes, educational assistants, school nurses, and coaches, shall administer a standardized test;

(3) [SDE] PED sign-in forms, listing training topics and printed name and signature, shall be maintained as a record by date to identify all individuals who have completed the district training in test security, practice materials, and administration of standardized tests;

(4) each sign-in record shall be maintained for at least five (5) calendar years and be made available for review by the [SDE] PED upon request;

(5) all test examiners and proctors shall be informed that prohibited test practices include but are not limited to:

(a) changing a student's standardized test answers or directing a student to change a standardized test answer;

(b) providing students with a review of specific standardized test items, specific standardized test items with minor

changes in settings or numbers, verbal or written restatements of standardized test items, specific vocabulary from standardized test directions or standardized test items, or answers before, during or after a standardized test;

(c) discussing, photocopying, or reproducing in any other fashion including paraphrasing, any portion of a standardized test or a student's answer;

(d) affording any student under a standardized administration extra time to complete a timed subtest, unless permitted as an accommodation;

(e) reading standardized test items aloud to students unless required in a specific standardized test or unless a student is required to be provided with special accommodations; permitting students to talk, become disruptive or exchange any papers during a standardized test;

(f) permitting students during a standardized test to have on their desk or use any unauthorized items, including but not limited to, scrap paper (if not required for a subtest), hand computers, laptop computers, cell phones with or without cameras, cameras, calculators, calculator watches and rulers unless any of these are required or permitted by standardized test instructions;

(g) permitting students to observe standardized test vocabulary words with definitions, addition or multiplication tables (in various forms), spelling words on the standardized test, or similar assistance material during the administration of the standardized test;

(i) permitting students to begin a subtest, leave the testing room, and return to finish the subtest;

(j) permitting students to enter a testing room after the standardized test has already commenced;

(k) permitting state-mandated test material to remain unattended in an unlocked room;

(l) taking standardized or state-mandated test material off campus unless specifically authorized by the district test coordinator;

(m) displaying or failing to conceal visual aids that may assist students in the testing room;

(6) test examiners shall take prompt, corrective action if they observe a student engaged in any prohibited conduct during a standardized test; and

(7) all test examiners shall be informed of their duty to promptly report testing irregularities as soon as they are aware to the district test coordinator.

D. Regardless of whether a district elects to appoint a school test coordinator, district test coordinators shall provide in-service training to all principals in their district in the storing, handling, destruction, and administration of

standardized test material.

(1) Principals shall receive the same in-service training and be charged with the same knowledge as those administering standardized test material and those serving as test examiners as set forth in Subsection C of Section 6.10.7.9 NMAC above.

(2) Although district test coordinators need not directly train assistant principals within their districts, if they choose not to train them, they shall at a minimum require assistant principals to be knowledgeable in accordance with subsection C of section 9 of 6.10.7 NMAC above.

E. All training required by this section shall be administered prior to the fall and spring test administration windows. The assessment and evaluation unit of the [SDE] PED shall inform the district test coordinators of the dates of those test administration windows in a memo disseminated to each district test coordinator at least annually.

[6.10.7.9 NMAC – N, 09-28-01; A, 11-13-09]

6.10.7.11 S T A F F RESPONSIBILITY:

A. All school district staff, including administrators, teachers, volunteers and office personnel who come in contact with standardized tests, shall familiarize themselves with basic principles of standardized test security. Any specific questions should be directed, first to their school or district test coordinator, then to the assessment and evaluation unit of the [SDE] PED.

B. Test examiners shall:

(1) administer the standardized test according to the directions and specifications in the standardized test examiner's manual and during the designated test administration window;

(2) return the standardized tests to the school or district test coordinator after testing each day during the test administration window for secure overnight storage;

(3) use test monitors in the hall to gather additional materials or deal with medical situations; and

(4) review the standardized test examiner's manual so that administration procedures are understood.

C. It shall be a prohibitive practice for anyone to:

(1) photocopy or reproduce in any other fashion including paraphrasing, any portion of a standardized test including a student's answer;

(2) teach from, possess or in any way disseminate a photocopy or other reproduced or paraphrased standardized test or portion of a standardized test;

(3) copy copyrighted test

preparation materials for the purpose of distribution;

(4) provide students with a review of specific standardized test questions or answers before, during or after a standardized test;

(5) permit secure standardized test material to remain unattended in an unlocked room;

(6) coach or otherwise inappropriately assist with the selection or writing of student answers; ~~and~~

(7) take standardized test material off campus unless specifically authorized by the district test coordinator or the assessment and evaluation unit of the [SDE] PED; ~~and~~

~~(8) disparage or diminish the significance, importance or use of the standardized tests.~~

[6.10.7.11 NMAC – N, 09-28-01; A, 11-13-09]

6.10.7.12 NON-DISCLOSURE OF STUDENT TEST MATERIALS:

All standardized tests in the [NMAP] NMSAP are the sole ~~[State Board-approved]~~ PED-approved and mandated assessments for the state of New Mexico. Each, with the exception of off-the-shelf standardized assessments, was developed by the [SDE] PED, or the test vendor under contract with the [SDE] PED, to help identify academic progress made by public education students and evaluate the program effectiveness of New Mexico public schools. The [SDE] PED has a proprietary interest in the assessments within the [NMAP] NMSAP. As such, the [SDE] PED must safeguard not only its proprietary interest, but also the confidentiality of each standardized test.

A. Any person suspected of engaging in a testing irregularity who requests a meeting, review, or hearing under state law or regulation shall have only limited access to test items within the [NMAP] NMSAP.

(1) Given the proprietary nature of any assessment which is part of the [NMAP] NMSAP, under no circumstance shall a standardized test which is part of the [NMAP] NMSAP be released.

(2) Upon request, a person suspected of engaging in a testing irregularity shall be given as much access to an [NMAP] NMSAP assessment as is reasonably necessary to prepare for a pending meeting or hearing.

(3) The original or copy of any [NMAP] NMSAP assessment used as evidence at any meeting or hearing shall also be subject to confidentiality by all attendees and participants.

B. Any person given permission to view an [NMAP] NMSAP assessment may only view the assessment during routine office hours of the [SDE] PED under supervision of an [SDE] PED employee

and on the [SDE's] PED's premises, unless permission is given to review the assessment under the direction of an appointee of the [SDE] PED. No [NMAP] NMSAP may be written on, marked, electronically copied, hand-duplicated, or otherwise removed from the premises of the [SDE] PED or a local education agency in possession of an [NMAP] NMSAP assessment.

C. Any person permitted to review any standardized test which is part of the [NMAP] NMSAP or participating in a review associated with assessment development procedures shall sign a non-disclosure form offered by the [SDE] PED agreeing not to reveal any confidential materials, specific standardized test items, or specific concepts or skills to be measured on the standardized test to include verbal or written restatements of standardized test items, minor changes in settings or numbers, and specific vocabulary from standardized test directions or standardized test items.

[6.10.7.12 NMAC – N, 09-28-01; A, 11-13-09]

6.10.7.13 REPORTING TESTING IRREGULARITIES:

The [SBE] PED finds that measuring student achievement through the administration of standardized tests will have a positive, long reaching impact on students, school districts and school improvement. To ensure the integrity of these tests and their results, the principles of test security must be strictly followed. Accordingly, material violations of this [regulation] rule or breaches of test security shall constitute good and just cause to suspend or revoke a person's [SBE] PED licensure. Additionally:

A. School district personnel and volunteers shall promptly report suspected testing irregularities to the district test coordinator. Where the district test coordinator is suspected of having engaged in a testing irregularity, reporting shall be made within three (3) days of learning of the suspected irregularity by telephoning the assessment and evaluation unit of the [SDE] PED.

B. School districts shall report by telephone suspected testing irregularities to the assessment and evaluation unit of the [SDE] PED within three (3) working days of being notified of a suspected testing irregularity.

C. The district test coordinator shall submit a report to the assessment and evaluation unit of the [SDE] PED that contains the allegation(s), his/her findings and corrective action taken, if any.

D. School districts shall cooperate with the [SDE] PED if the [SDE] PED determines that further investigation or action is needed.

[6.10.7.13 NMAC – N, 09-28-01; A, 11-13-09]

6.10.7.14 CORRECTIVE MEASURES: After investigating suspected testing irregularities and confiscating any standardized test material it deems necessary to conclude its investigation, the [SDE] PED may take any combination of the following corrective measures:

A. direct the district or a named individual to cease and desist engaging in a particular testing irregularity ~~and/or~~ or the administration of further standardized tests during the current school year;

B. confiscate any standardized test materials that jeopardizes the security of the standardized test;

C. recommend any further action it deems reasonable and necessary to maintain test security;

D. invalidate the standardized test results and inform the district that a specific standardized test or portion of a standardized test must be replaced with a re-administered similar or alternative form, or any affected student will not receive scores on portions or all of a standardized assessment;

E. refer the matter for possible suspension or revocation of a person's educator or administrator licensure or other [SBE] PED licensure pursuant to procedures set forth in the [SBE's] PED's suspension/revocation [regulation] rule;

F. refer the matter to the accreditation team for appropriate action;

G. take any other action authorized by state or federal law or regulation.

[6.10.7.14 NMAC – N, 09-28-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.11.2 NMAC, Sections 1, 2, 3, 8, 9, 10, 11 and 12, effective November 13, 2009.

6.11.2.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[08-15-97, 07-30-99; 6.11.2.1 NMAC - Rn, 6 NMAC 1.4.1, 11-30-00; A, 11-13-09]

6.11.2.2 SCOPE: This [regulation] rule applies to public schools and public school students.

[08-15-97; 6.11.2.2 NMAC - Rn, 6 NMAC 1.4.2, 11-30-00; A, 11-13-09]

6.11.2.3 STATUTORY AUTHORITY: This [regulation] rule is adopted pursuant to Sections 22-2-1 and 22-2-2 NMSA 1978.

[08-15-97; 6.11.2.3 NMAC - Rn, 6 NMAC

1.4.3, 11-30-00; A, 11-13-09]

6.11.2.8 GENERAL PROVISIONS:

A. Jurisdiction over students. All officials, employees and authorized agents of the public schools whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees and authorized agents of the public schools may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, public school authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law or ~~[state board of education regulation]~~ public education department rule.

B. School authority over non-students. In furtherance of the state's compelling interest in the orderly operation of the public schools and school activities, school officials have the following forms of authority over non-students whose actions adversely affect school operations or activities.

(1) On school property: Local school boards may prohibit entry to and provide for the removal from any public school building or grounds of any person who refuses to identify him/herself and state a lawful purpose for entering. Any person who refuses may be removed by school authorities, who may use reasonable physical force to accomplish the removal. Alternately, a person who refuses and who then refuses a lawful request to leave school premises may be subject to arrest by law officers for criminal offenses including but not limited to criminal trespass, interference with the educational process or disorderly conduct. A person who does identify him/herself and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this [regulation] rule. The person may also be subject to arrest by law officers if (s) he is committing any crime.

(2) Off school property: Public school authorities have indirect and limited

authority over the activities of non-students off school property. To the extent that non-students' conduct at or near schools or school-sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass (after refusing a lawful request to leave), school authorities may request law enforcement agencies to arrest the offenders.

C. Statement of policy. A primary responsibility of the New Mexico public schools and their professional staffs shall be to instill in students an appreciation of our representative form of government, the rights and responsibilities of the individual or group and the legal processes whereby necessary changes are effected.

(1) The school is a community and the rules and regulations of a school are the laws of that community. All persons enjoying the rights of citizenship are subject to the laws of their community. Each carries with it a corresponding obligation.

(2) The right to attend public school is not absolute. It is conditioned on each student's acceptance of the obligation to abide by the lawful rules of the school community until and unless the rules are changed through lawful processes.

(3) Teachers, administrators and other school employees also have rights and duties. Teachers are required by law to maintain a suitable environment for teaming in their classes and to assist in maintaining school order and discipline. Administrators are responsible for maintaining and facilitating the educational program by ensuring an orderly, safe environment in the public schools. In discharging their duties, all school employees have the right to be free from intimidation or abuse and to have their lawful requests and instructions followed.

(4) Nothing in this [regulation] rule shall be held to affect the due process rights of school employees or their use of any local school district grievance procedure. This [regulation] rule does not address employment disputes.

D. Local school board authority: Local school boards have both the authority and the responsibility to ensure that suitable rules of student conduct and appropriate disciplinary processes are established within their school districts. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, and subject to the minimums prescribed in this [regulation] rule, local boards have discretion to develop such rules, regulations, policies and procedures as they deem appropriate to local conditions, including policies which afford students more protection than the minimums established here. Local school boards and administrative authorities which deem it appropriate may provide for student, community [and/or] or appropriate state and

local agency participation in the formulation and enforcement of school rules.

E. Severability: Any part of this [regulation] rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.

[08-15-97; 6.11.2.8 NMAC - Rn, 6 NMAC 1.4.8, 11-30-00; A, 11-13-09]

6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS:

The acts specified in Subsection A. of 6.11.2.9 NMAC below are prohibited in all the public schools of New Mexico. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, local school boards have discretion to develop rules of conduct governing all others area of student and school activity.

A. Prohibited activities: The commission of or participation in the activities designated below is prohibited in all New Mexico public schools and is prohibited for students whenever they are subject to school control. Acts prohibited by this [regulation] rule:

- (1) criminal or delinquent acts;
- (2) gang related activity;
- (3) sexual harassment;
- (4) disruptive conduct;
- (5) refusal to identify self; and
- (6) refusal to cooperate with school personnel.

B. Regulated activities: Beyond those activities designated above as prohibited, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Conduct by non students which affects school operations may be regulated within legal limits pursuant to any of the forms of authority described in Subsection B. of 6.11.2.8 NMAC above. Activities subject to local board regulation within legal limits include, but are not limited to:

- (1) school attendance;
- (2) use of and access to the public schools, including:

(a) restrictions on vehicular traffic on school property,

(b) prohibition of or conditions on the presence of non-school persons on school grounds or in school buildings while school is in session; and

(c) reasonable standards of conduct for all persons attending school-sponsored activities or other activities on school property;

- (3) students' dress and personal appearance;
- (4) use of controlled substances, alcohol and tobacco in the public schools;
- (5) speech and assembly within the public schools;
- (6) publications distributed in the

public schools;

(7) the existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;

(8) by statute, Section 22-5-4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board; the local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis; the special rule provisions of Subsection D. of 6.11.2.11 NMAC apply to students with disabilities;

(9) the discipline of students for out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school. [08-15-97; 6.11.2.9 NMAC - Rn, 6 NMAC 1.4.9, 11-30-00; A, 11-13-09]

6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Formal enforcement action under the Compulsory School Attendance Law, supra, and the [~~Family in Need of Services Act~~] Family Services Act, Section [~~32A-3-1~~] 32A-3A-1 et seq. NMSA 1978 shall be initiated whenever a student's absences indicate that the law is being violated. An administrative authority who has reason to believe a student is violating local school board attendance policies may take whatever further disciplinary action is deemed appropriate under local policies.

B. Search and seizure: School property assigned to a student and a student's person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with the requirements below.

(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.

(2) Who may search. Certified school personnel, school security personnel and school bus drivers are "authorized persons" to conduct searches when a search is permissible as set forth below. An authorized person who is conducting a search may request the assistance of some other person(s), who upon consent become(s) an authorized person for the purpose of that search only.

(3) When search permissible. Unless local school board policy provides otherwise, an authorized person may

conduct a search when (s)he has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when (s)he has reasonable cause to believe that a search is necessary to help maintain school discipline.

(4) Conduct of searches; witnesses. The following requirements govern the conduct of permissible searches by authorized persons:

(a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.

(b) Student vehicles when on campus or otherwise under school control and students' personal effects which are not within their immediate physical possession may be searched in accordance with the requirements for locker searches.

(c) Physical searches of a student's person may be conducted only by an authorized person who is of the same sex as the student, and except when circumstances render it impossible may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search must not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.

(5) Seizure of items: Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

(6) Notification of law enforcement authorities: Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.

C. Basis for disciplinary action: A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) for committing any act which endangers the health or safety of students, school personnel or others for whose safety the public school is responsible, or

for conduct which reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;

(2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or

(3) for committing acts prohibited by this [regulation] rule, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.

(1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex or disability rather than on other differences in individual cases or students.

E. Corporal punishment. Each local school board with community input shall determine whether to permit the use of corporal punishment and shall publish and distribute a written policy either authorizing or prohibiting its use. Where corporal punishment is authorized, the written policy shall specify the allowable forms of punishment, the conditions under which it may be used and the procedures to be followed in administering it. A school board policy authorizing corporal punishment will override any parent's objection to its use unless the local board also authorizes individual parents to veto corporal punishment of their children. Where a local board has not authorized a parental veto, an administrative authority may in any event decline to apply corporal punishment if (s) he has reason to believe that an individual student is physically or emotionally unable

to withstand reasonable corporal punishment or if (s)he believes that corporal punishment would be ineffective or inappropriate.

F. Detention, suspension and expulsion: Where detention, suspension [and/or] or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC below.

G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in Section 6.11.2.11 NMAC below.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection G, Paragraph (3) of 6.11.2.10 NMAC below.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[08-15-97; 6.11.2.10 NMAC - Rn, 6 NMAC 1.4.10, 11-30-00; A, 6-29-07; A, 11-13-09]

6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:

(1) long-term suspension or expulsion; or

(2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other [department] public education department rules and standards.

B. When behavior is not a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of

this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

C. Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:

(a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.

(3) If the administrative authority, the parent and relevant members of the child's IEP team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.

D. Determination that behavior is manifestation of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR Sec. 300.530(f).

E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply.

F. Determination of setting. The student's IEP team determines the interim alternative educational setting for services under Subsections B and E of this section.

G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR Sec. 300.536 are met.

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d).

J. Appeal.

(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

(2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).

(3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, which ever occurs first, unless the parent and the administrative authority agree otherwise.

[08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6-29-07; A, 11-13-09]

6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:

The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. But it is a property right which may only be denied where school authorities have adhered to the

minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension and temporary, long-term or permanent removal of students from the public schools. Local school boards may adopt procedures which afford students more protection than this rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for ten (10) consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day.

B. Students with disabilities. This section does not apply to long-term suspension or expulsion of students who are disabled pursuant to the IDEA or Section 504. The procedures for long-term suspension or expulsion of disabled students are set forth in Section 6.11.2.11 NMAC above. School personnel under this section may remove a student with a disability who violates a rule of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC above).

C. Immediate removal: Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.

(1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.

(2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is

also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).

(3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.

(1) A local school board may limit temporary suspensions to periods shorter than ten (10) school days.

(2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.

(a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.

(b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.

(c) A student who denies a charge of misconduct shall be told what act(s) (s) he is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although (s)he should not withhold such information without good cause. (S)he is required to disclose the substance of all evidence on which (s)he proposes to base a decision in the matter.

(d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.

(e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

E. In-school suspension.

(1) In-school suspension may be imposed with or without further restriction

of student privileges. Any student who is placed in an in-school suspension which exceeds ten (10) school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than ten (10) school days.

(2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention.

(1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that it does not entail removing the student from any of his or her regular classes.

(2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

G. Long-term suspension and expulsion.

(1) Each local school board shall authorize appropriate administrative authorities to initiate procedures leading to long-term suspension or expulsion. Where prompt action to suspend a student long-term is deemed appropriate, a temporary suspension may be imposed while the procedures for long-term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student must be returned to school pending the final outcome unless the provisions of Subsection G, Paragraph (4), Subparagraphs (j) and (k) of Section 6.11.2.12 NMAC below apply.

(2) A student who has been validly expelled or suspended is not entitled to receive any educational services from the local district during the period of the exclusion from school. A local school board may provide alternative arrangements, including correspondence courses at the student's or parent's expense pursuant to [state board of education] public education department requirements, if the board deems such arrangements appropriate.

(3) Each local school board shall establish, or shall authorize appropriate administrative authorities to establish,

appropriate processes for handling long-term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in the procedures below shall be construed as directing that any required decision be made by any particular person or body or at any particular level of administrative organization.

(4) The following rules shall govern the imposition of long-term suspensions or expulsions:

(a) Hearing authority; disciplinarian. The same person or group may, but need not, perform the functions of both hearing authority and disciplinarian. Where the functions are divided, the hearing authority's determination of the facts is conclusive on the disciplinarian, but the disciplinarian may reject any punishment recommended by the hearing authority.

(b) Review authority. Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian's decision, but may not impose a harsher punishment. A review authority shall be bound by a hearing authority's factual determinations except as provided in Subsection G, Paragraph (4), Subparagraph (c) of Section 6.11.2.12 NMAC below.

(c) Disqualification. No person shall act as hearing authority, disciplinarian or review authority in a case where (s) he was directly involved in or witnessed the incident(s) in question, or if (s)he has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.

(d) Local board participation. A local board may act as hearing authority, disciplinarian or review authority for any cases involving proposed long-term suspensions or expulsions. Whenever a quorum of the local board acts in any such capacity, however, the Open Meetings Act, Section 10-15-1 et seq., NMSA 1978 requires a public meeting.

(e) Initiation of procedures. An authorized administrative authority shall initiate procedures for long-term suspension or expulsion of a student by designating a hearing authority and disciplinarian in accordance with local board policies, scheduling a formal hearing in consultation with the hearing authority and preparing and serving a written notice meeting the requirements of Subsection G, Paragraph (4), Subparagraph (h) of Section 6.11.2.12 NMAC below.

(f) Service of notice. The written notice shall be addressed to the student, through his or her parent(s), and shall be served upon the parent(s) personally or by mail.

(g) Timing of hearing. The hearing shall be scheduled no sooner than five (5) nor later than ten (10) school days from the

date of receipt of the notice by the parent(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of Subsection G, Paragraph (4), Subparagraph (i) of Section 6.11.2.12 NMAC below.

(h) Contents of notice. The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:

(i) the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based and a statement of the possible penalty;

(ii) the date, time and place of the hearing, and a statement that both the student and parent are entitled and urged to be present;

(iii) a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;

(iv) a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative designated in a written notice filed at least seventy-two (72) hours before the hearing with the contact person named pursuant to Subsection G, Paragraph (4), Subparagraph (h), Sub-subparagraph (vi) of Section 6.11.2.12 NMAC below;

(v) a description of the procedures governing the hearing;

(vi) the name, business address and telephone number of a contact person through whom the student, parent or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and

(vii) any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.

(i) Delay of hearing. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Such discretion may be limited or guided by local school board policies not otherwise inconsistent with this [regulation] rule.

(j) Students status pending hearing. Where a student has been suspended temporarily and a formal hearing on long-term suspension or expulsion will not occur

until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:

(i) the provisions of Subsection G, Paragraph (4), Subparagraph (k) of Section 6.11.2.12 NMAC below apply, or

(ii) the student and parent(s) have knowingly and voluntarily waived the students right to return to school pending the outcome of the formal proceedings, or

(iii) the appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.

(k) Waiver of hearing; voluntary compliance or negotiated penalty. A student and his or her parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.

(l) Procedure for hearing and decision. The formal hearing is not a trial. It is an administrative hearing designed to ensure a calm, orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following-rules govern the conduct of the hearing and the ultimate decision.

(i) The school shall have the burden of proof of misconduct.

(ii) The student and his or her parent shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.

(iii) The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a

preponderance of the evidence presented at a hearing at which the student [and/or] or a designated representative have appeared.

(iv) If no one has appeared on the students behalf within a reasonable time after the announced time for the hearing, the hearing authority shall determine whether the student, through the parent, received notice of the hearing. If so, the hearing authority shall review the schools' evidence to determine whether it is sufficient to support the charges(s) of misconduct.

(v) A hearing authority who is also a disciplinarian shall impose an appropriate sanction if (s)he finds that the allegations of misconduct have been proved under the standards of either Subsection G, Paragraph (4), Subparagraph (l), Sub-subparagraph (iii) or Sub-subparagraph (iv) of Section 6.11.2.12 NMAC above. A hearing authority who is not a disciplinarian shall report its findings, together with any recommended sanction, to the disciplinarian promptly after the hearing.

(vi) Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the administrative authority who scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the evidence presented.

(vii) The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority who is also a disciplinarian may also impose a penalty at the close of the hearing.

(viii) In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent, a written decision within five (5) working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority who is also a disciplinarian shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty. A hearing authority who is not a disciplinarian shall forward a copy of his or her written decision to the disciplinarian forthwith. The disciplinarian shall prepare a written decision, including reasons for choosing any penalty imposed, and mail or deliver it to the student, through the parent, within five (5) working days of receipt of the hearing authority's report.

(ix) A disciplinarian who is not a hearing authority may observe but not participate in the proceedings at a formal hearing. If the disciplinarian has done so and if the hearing authority announces a decision at the close of the hearing, the disciplinarian

may also announce his or her decision at that time.

(x) The disciplinarian's decision shall take effect immediately upon initial notification to the parent, either at the close of the hearing or upon receipt of the written decision. If initial notification is by mail, the parent shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.

(m) Effect of decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or if the disciplinarian declines to impose a penalty despite a finding that an act or acts of misconduct have been proved, the matter shall be closed. If the disciplinarian imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent and shall continue in force during any subsequent review.

(n) Right of review. Unless the local school board was the disciplinarian, a student aggrieved by a disciplinarian's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester or a denial or restriction of student privileges for one semester or longer. A local school board may grant a right of review for less severe penalties. Local school boards shall establish appropriate mechanisms for review except where the local board was the disciplinarian, in which case its decision is final and not reviewable administratively. A student request for review must be submitted to the review authority within ten (10) school days after the student is informed of the disciplinarian's decision.

(o) Conduct of review. Unless the local board provides otherwise, a review authority shall have discretion to modify the disciplinarian's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious or unsupported by substantial evidence or that new evidence which has come to light since the hearing and which could not with reasonable diligence have been discovered in time for the hearing would manifestly change the factual determination. Upon any such finding, the review authority shall have discretion to receive new evidence, reconsider evidence introduced at the hearing or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an inquiry into the appropriateness of the penalty imposed.

(p) Form of review. Unless

the local board provides otherwise, a review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials [and/or] or to grant a conference or hearing at which the student and his or her representative, and school authorities may present their respective views in person. Where a conference or hearing is granted, the record-keeping requirements of Subsection G., Paragraph (4), Sub-paragraph (l), Sub-sub-paragraph (vi) of Section 6.11.2.12 NMAC above apply.

(q) Timing of review. Except in extraordinary circumstances, a review shall be concluded no later than fifteen (15) working days after a student's written request for review is received by the appropriate administrative authority.

(r) Decision. A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the disciplinarian, the hearing authority and the student, through the parent, within ten (10) working days after the review is concluded.

(s) Effect of decision. Unless the local school board provides otherwise, a review authority's decision shall be the final administrative action to which a student is entitled.

[08-15-97; 6.11.2.12 NMAC - Rn, 6 NMAC 1.4.12, 11-30-00; A, 6-29-07; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.12.4 NMAC, Sections 1, 2, 3, 6, 7 and 8, effective November 13, 2009. The part name is also amended.

PART 4 T O B A C C O , ALCOHOL AND DRUG FREE SCHOOL DISTRICTS

6.12.4.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[12-31-98, 07-30-99; 6.12.4.1 NMAC - Rn, 6 NMAC 1.6.3.1, 05-31-01; A, 11-13-09]

6.12.4.2 SCOPE: This [regulation] rule applies to local school boards and school districts.

[12-31-98; 6.12.4.2 NMAC - Rn, 6 NMAC 1.6.3.2, 05-31-01; A, 11-13-09]

6.12.4.3 STATUTORY AUTHORITY: This [regulation] rule is adopted pursuant to Sections 22-2-1, [and] 22-2-2 and 22-5-4.4, NMSA 1978.

[12-31-98; 6.12.4.3 NMAC - Rn, 6 NMAC 1.6.3.3, 05-31-01; A, 11-13-09]

6.12.4.6 OBJECTIVE: The purpose of this [regulation] rule is to prohibit the use of tobacco products, alcoholic beverages and illicit drugs in school buildings, on school property, and for students at school functions away from school property.

[12-31-98; 6.12.4.6 NMAC - Rn, 6 NMAC 1.6.3.6, 05-31-01; A, 11-13-09]

6.12.4.7 DEFINITIONS: [Reserved]

A. "Alcoholic beverage" means a beverage with no less than one-half percent alcohol and includes wine, beer, fermented, distilled, rectified and fortified beverages.

B. "Illicit drugs" means steroids and prescription and over-the-counter medications being used for an abusive purpose or when they are not used in compliance with the prescription or directions for use and are not being used to treat a current health condition of the student.

C. "Mood-altering substances" means substances that include, but are not limited to paint, glue, aerosol sprays and similar substances.

D. "Tobacco" means substances that include, but are not limited to cigarettes, cigars, chewing tobacco, dipping tobacco, snuff and similar substances.

[6.12.4.7 NMAC - N, 11-13-09]

6.12.4.8 REQUIREMENTS: Each local school board shall implement a policy that will include:

A. Prohibiting tobacco use, alcoholic beverage possession or use, and illicit drug possession or use by students, school staff, parents, and school visitors in school buildings, on school property, and for students at school functions away from school property.

B. Each school district shall develop a procedure for communicating this policy to students, school staff, parents, school visitors and the community.

C. Each school district shall develop provisions for enforcement of this policy which shall include reporting to a designated person, without fear of retaliation, any known or suspected instances of tobacco use, alcoholic beverage or illicit drug possession or use.

D. Each school district shall conspicuously post notices on school grounds stating that the use of tobacco and possession or use of alcoholic beverages and illicit drugs is prohibited on school grounds.

[12-31-98; 6.12.4.8 NMAC - Rn, 6 NMAC 1.6.3.8, 05-31-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.13.2 NMAC, Sections 1, 2, 3, 6, 8 and 9, effective November 13, 2009.

6.13.2.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[10-30-97, 01-15-99, 07-30-99; 6.13.2.1 NMAC - Rn, 6 NMAC 1.2.1.1, 12-29-00; A, 11-13-09]

6.13.2.2 SCOPE: This [regulation] rule governs the process by which rules promulgated by the New Mexico activities association are considered by the [state board of education] public education department for approval or disapproval pursuant to Subsection [R] L of Section 22-2-2 NMSA 1978, and the process for the review of decisions made by the governing board or officials of the New Mexico activities association pursuant to Subsection [S] M of Section 22-2-2 NMSA 1978.

[11-03-95, 10-30-97, 01-15-99; 6.13.2.2 NMAC - Rn, 6 NMAC 1.2.1.2, 12-29-00; A, 11-13-09]

6.13.2.3 STATUTORY AUTHORITY: This [regulation] rule is adopted pursuant to Sections 22-2-1 and 22-2-2 NMSA 1978.

[11-03-95, 10-30-97, 01-15-99; 6.13.2.3 NMAC - Rn, 6 NMAC 1.2.1.3, 12-29-00; A, 11-13-09]

6.13.2.6 OBJECTIVE: The purpose of this [regulation] rule is to set forth the requirements applicable to the regulation of interscholastic activities by the New Mexico activities association.

A. The New Mexico activities association may establish rules for the organization, regulation and enforcement of interscholastic activities for its member schools, subject to the approval or disapproval of said rules by the [state board of education] public education department. The [state board of education] public education department, however, shall have no power or control over the rules or regulations or bylaws governing the administration of the internal organization of the New Mexico activities association.

B. The rules established by the New Mexico activities association for the organization, regulation and enforcement of interscholastic activities shall support equal educational opportunities for every student.

C. The New Mexico activities association shall establish a process for the proposed adoption or amendment of rules by its member schools. A majority vote of eligible member schools affected by the

proposed process shall be required before the proposed process is presented to the [state board of education] public education department for approval or disapproval. ~~The proposed process shall be presented to the state board of education no later than its June 1996 meeting. The state board of education~~ The public education department may also promulgate its own [regulations] rules governing interscholastic activities in accordance with the provisions of the Public School Code.

D. The New Mexico activities association shall compile all existing rules having been voted upon by the affected member schools and submit them to the [state board of education] public education department for approval or disapproval. All newly proposed rules or amendments to existing rules shall thereafter be submitted to the [state board of education] public education department for approval or disapproval. The [state board of education] public education department will approve or disapprove newly proposed rules or amendments to existing rules within sixty (60) days of receipt. The [state board of education] public education department may, at its sole option and without cause, extend the time period from sixty (60) days to ninety (90) days by providing written notification to the New Mexico activities association within the initial sixty (60) day time period. If the [state board of education] public education department has taken no action on a newly proposed rule or amendment to an existing rule within the specified time period, the rule or amendment will be deemed to be approved. If the [state board of education] public education department disapproves a proposed rule(s) or amendment to an existing rule, the [state board of education] public education department, or its designee(s), will consult with the New Mexico activities association regarding potential alternatives.

E. The New Mexico activities association shall provide the [state board of education] public education department with an annual performance and financial audit.

[11-03-95, 10-30-97, 01-15-99; 6.13.2.6 NMAC - Rn, 6 NMAC 1.2.1.6, 12-29-00; A, 11-13-09]

6.13.2.8 REQUIREMENTS:

The following requirements apply to the state administrative review of decisions of the New Mexico activities association:

A. A decision of the New Mexico activities association, in which a party is aggrieved, may be appealed to the [state superintendent of public instruction] secretary of public education or his/her designee after all New Mexico activities association grievance and appeal procedures have been followed.

B. All requests for state

administrative review shall be made in writing to the [state superintendent of public instruction] secretary of public education and be filed with his/her office within fifteen (15) days of the date of mailing of the decision of the New Mexico activities association's review authority. Filing shall be accomplished when the request for state administrative review is received in the office of the [state superintendent of public instruction] secretary of public education. The aggrieved party shall further send a copy of the request for state administrative review to the executive director of the New Mexico activities association.

C. The request for state administrative review shall be signed by the aggrieved party or his/her designated representative and shall state specifically the questions raised before the New Mexico activities association's review authority which the [state superintendent of public instruction] secretary of public education is requested to review with reference to the applicable rules of the New Mexico activities association.

D. Within five (5) calendar days of the receipt of the copy of the request for state administrative review, the executive director of the New Mexico activities association shall send to the [state superintendent of public instruction] secretary of public education by certified mail the decision of the New Mexico activities association's review authority, the record of the hearing before the review authority, including any exhibits admitted into evidence before the review authority, and the document evidencing the date on which the decision of the review authority was mailed to the aggrieved party.

E. ~~[The state superintendent of public instruction may appoint a state administrative review panel consisting of a member selected by the president of the state board of education, a member selected by the president of the New Mexico activities association and an independent member selected by the other two members of the state administrative review panel to review the decision of the New Mexico activities association. No person who participated in the New Mexico activities association grievance and appeal procedures and no member of the state board of education shall serve on the state administrative review panel. In the event, however, that the state superintendent of public instruction determines that extenuating circumstances exist, he/she may appoint a hearing officer to review the decision of the New Mexico activities association.]~~ Upon receipt of the record from the executive director of the New Mexico activities association, the secretary of public education shall appoint a hearing officer and administrative review panel to review the decision of the New

Mexico activities association. The hearing officer and administrative review panel shall consist of employees of the public education department knowledgeable about the practices and procedures of the New Mexico activities association who can discharge their responsibilities in a fair, reasonable and unbiased manner.

F. The state administrative review panel ~~[or the]~~ and its hearing officer shall provide a recommended decision, including recommended findings and the basis for such findings, to the [state superintendent of public instruction] secretary of public education within twenty-five (25) calendar days of the filing of the request for state administrative review.

G. The review by the [state superintendent of public instruction] secretary of public education or his/her designee(s) shall be on the record and shall be limited to the questions raised in the hearing before the New Mexico activities association's review authority and set forth in the request for state administrative review.

H. The [state superintendent of public instruction] secretary of public education shall issue a written decision, including findings of fact and the basis for such findings, within thirty (30) calendar days of the filing of the request for state administrative review, unless such time is extended by the [state superintendent of public instruction] secretary of public education for good cause. Such written decision shall be sent to the parties by certified mail.

[11-03-95, 01-15-99; 6.13.2.8 NMAC - Rn, 6 NMAC 1.2.1.8, 12-29-00; A, 11-13-09]

6.13.2.9 ISSUING AUTHORITY:

A. Interscholastic activities are an integral and essential component of New Mexico youth, and the curricula within New Mexico schools. In order to provide such opportunities for students, these activities must be organized, supervised and regulated in a fair, open and consistent manner. Effective programs require that the [state board of education] public education department and the New Mexico activities association work in a cooperative and supportive partnership for the benefit of students. The purpose of this [regulation] rule is to establish a procedure by which the [state board of education] public education department and the New Mexico activities association can accomplish their respective roles in the regulation of interscholastic activities.

B. A copy of this [regulation] rule, which should be identified as a [state board of education regulation] public education department rule, shall be included by the New Mexico activities association as part of its [state board of

education] public education department approved rules. Any rule or regulation of the New Mexico activities association in conflict with this [regulation] rule is hereby invalidated in accordance with the provisions of the Public School Code.

[11-03-95; 01-15-99; 6.13.2.9 NMAC - Rn, 6 NMAC 1.2.1.9, 12-29-00; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.13.4 NMAC, Sections 1, 2, 3, 6, 7 and 8, effective November 13, 2009. The part name is also amended.

PART 4 G O V E R N I N G GENDER EQUITY IN PARTICIPATION IN INTERSCHOLASTIC SPORTS

6.13.4.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[01-29-99, 07-30-99; 6.13.4.1 NMAC - Rn, 6 NMAC 1.2.3.1, 12-29-00; A, 11-13-09]

6.13.4.2 SCOPE: [This regulation applies to local school boards and school districts] This rule applies to school districts and charter schools.

[01-29-99; 6.13.4.2 NMAC - Rn, 6 NMAC 1.2.3.2, 12-29-00; A, 11-13-09]

6.13.4.3 S T A T U T O R Y AUTHORITY: This [regulation] rule is adopted pursuant to Sections 22-2-1, [and] 22-2-2 NMSA 1978, the School Athletics Equity Act [22-31-1 to 22-31-6 NMSA 1978], and 20 U.S. Code 1681, et seq.

[01-29-99; 6.13.4.3 NMAC - Rn, 6 NMAC 1.2.3.3, 12-29-00; A, 11-13-09]

6.13.4.6 OBJECTIVE: The purpose of this [regulation] rule is to prohibit discrimination on the basis of [sex] gender in interscholastic sports.

[01-29-99; 6.13.4.6 NMAC - Rn, 6 NMAC 1.2.3.6, 12-29-00; A, 11-13-09]

6.13.4.7 D E F I N I T I O N S : [Reserved]

A. "Department" means
the public education department.

B. "School Athletics
Equity Act" means a state law enacted to
require annual data collection and reporting
to ensure that any public school operating an
athletics program for grades seven through
twelve shall do so in a manner that does not
discriminate against students or staff on the
basis of gender.

C. "Title 9" means federal
Public Law 92-318, Title 9 of the Education
Amendments of 1972 which is codified at 20
U.S. Code 1681, et seq.

[01-29-99; 6.13.4.7 NMAC - Rn, 6 NMAC 1.2.3.7, 12-29-00; A, 11-13-09]

6.13.4.8 REQUIREMENTS:

A. No officer, agent or
employee of any local school board, [or]
school district [subject to the jurisdiction of
the state board of education] or charter school
shall subject any person to discrimination
based on [sex] gender in any interscholastic
sport. Nor shall any public school operate
its interscholastic program in a manner that
discriminates against students or staff on the
basis of gender.

B. [Local school boards
and school districts] School districts and
charter schools shall provide comparable
athletic opportunity in interscholastic sports
for both [sexes] genders. Each [local school
board and] school district and charter school
has the option of prohibiting participation
by both [sexes] genders on the same team,
where comparable or separate athletic
opportunity exists for both [sexes] genders.
Comparable athletic opportunity exists
only where a good faith effort is made so
that teams are provided with comparable
facilities, equipment, supplies, game and
practice schedules, travel and per diem
allowances, coaching (including assignment
and compensation of coaches), academic
tutoring, housing, dining facilities and
publicity.

[C. In determining
comparable athletic opportunity, local school
boards and school districts shall undertake
self-evaluation and continuing reappraisal
of student needs as determined by the total
educational program. During the process
of self-evaluation, local school boards and
school districts should examine all of the
athletic opportunities for males and females
and make a determination as to whether
each has an equal opportunity to compete
in athletics. The equal opportunity emphasis
in the regulation addresses the totality of the
athletic program of the local school board
and school district rather than each sport
offered.]

C. All school districts
and charter schools shall designate at least
one Title 9 coordinator whose name, title,
school address and telephone number shall
be prominently displayed on the district's
or charter school's website and in school
publications and handbooks. A Title 9
coordinator shall at a minimum have the
following responsibilities:

(1) to receive and process
complaints and inquiries related to Title 9;

(2) to make recommendations
to the school administration on best
practices for avoiding and correcting sex
discrimination in school athletics programs;

(3) to carry out the local school's
athletic non-discrimination policy; and

(4) to enforce corrective measures

to comply with Title 9 after an adjudication
or determination of non-compliance.

D. In determining
comparable athletic opportunity, each public
school that has an athletics program for
grades seven through twelve shall undertake
self-evaluation and continuing reappraisal
of student needs as determined by the total
educational program. To assist in the self-
evaluation, each public school that has an
athletics program for grades seven through
twelve shall report the following data to the
department:

(1) Beginning August 31, 2011
and each year thereafter no later than August
31st, the following data shall be submitted to
the department in a format required by the
department:

(a) the following information
pertaining to enrollment:

(i) the total enrollment
in each public school as an average of
enrollment at the eightieth and one hundred
twentieth days of the school year;

(ii) student enrollment
by gender;

(iii) total number of
students participating in athletics;

(iv) athletics
participation by gender; and

(v) the number of boys'
teams and girls' teams by sport and by
competition level;

(b) the following information
pertaining to athletic directors, coaches and
other school personnel:

(i) the name and gender
of each public school's athletic director;

(ii) the name of each
team's coaches and other team personnel,
with their gender, job title and employment
status, such as full-time, part-time, contract
or seasonal, specified;

(iii) the coach-to-athlete
and staff-to-athlete ratio for each team; and

(iv) the stipend or other
compensation for coaching paid to coaches
of boys' teams and to coaches of girls' teams
for each public school.

(2) Beginning August 31, 2012
and each year thereafter no later than August
31st, the following data shall be submitted to
the department in a format required by the
department:

(a) an accounting of the funding
sources that are used to support the school's
athletics programs and to which teams those
funds are allocated funding sources include:

(i) state funding;

(ii) federal funding;

(iii) fund raising or
booster clubs;

(iv) game and
concession receipts;

(v) gate receipts;

(vi) cash or in-kind
donations;

(vii) grants; and
 (viii) any other sources;
 (b) the following information regarding expenditures:
 (i) any capital outlay expenditures for each public school's athletics programs;
 (ii) the expenditures for each public school's athletics programs; and
 (iii) the expenditures of individual teams, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment; uniforms; facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and other expenses incurred by each team;
 (c) a statement of benefits and services to each team.
 E. Each public school shall:
 (1) make the above referenced data available to the public including all materials relied upon to compile the data;
 (2) at least annually inform all students attending their school of their right to review the data;
 (3) maintain in a retrievable form its data and all materials relied upon to complete the data for at least three years;
 (4) annually publish its data in a newspaper of general circulation in the state or make the data available on its publicly accessible website; and
 (5) no later than August 31st of each year submit an assurance of compliance with Title 9 to its local school board or governing body and provide a copy to the department.

F. The department shall publish and submit an annual report to the governor and legislature including the following information:

- (1) each public school's data;
 - (2) a list of public schools that did not submit fully completed data;
 - (3) a list of public school that fail to submit the assurance of compliance with Title 9; and
 - (4) recommendations on how to increase gender equity in athletics in public schools.
- [01-29-99; 6.13.4.8 NMAC - Rn, 6 NMAC 1.2.3.8, 12-29-00; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.20.4 NMAC, Sections 1, 2, 3 and 6, effective November 13, 2009. The part name is also amended to correct a spelling error.

PART 4 DEFINITIONS OF FULL-TIME AND PART-

TIME SCHOOL [INSTRUC] INSTRUCTORS

6.20.4.1 ISSUING AGENCY: [State Board of Education] Public Education Department
 [02-15-99, 07-30-99; 6.20.4.1 NMAC - Rn, 6 NMAC 2.2.5.1, 12-29-00; A, 11-13-09]

6.20.4.2 SCOPE: This [regulation] rule applies to local school boards, local school districts and certified school instructors.
 [02-15-99; 6.20.4.2 NMAC - Rn, 6 NMAC 2.2.5.2, 12-29-00; A, 11-13-09]

6.20.4.3 STATUTORY AUTHORITY: This [regulation] rule is adopted pursuant to Sections 22-2-1 and 22-2-2, NMSA 1978.
 [02-15-99; 6.20.4.3 NMAC - Rn, 6 NMAC 2.2.5.3, 12-29-00; A, 11-13-09]

6.20.4.6 OBJECTIVE: The purpose of this [regulation] rule is to provide local school boards and local school districts with a definition of full-time and part-time school instructors.
 [02-15-99; 6.20.4.6 NMAC - Rn, 6 NMAC 2.2.5.6, 12-29-00; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.20.5 NMAC, Sections 1, 2, 3, 6, 8, 9, 10 and 11, effective November 13, 2009.

6.20.5.1 ISSUING AGENCY: [State Board of Education] Public Education Department
 [01-15-99, 07-30-99; 6.20.5.1 NMAC - Rn, 6 NMAC 2.2.3.1, 06-14-01; A, 11-13-09]

6.20.5.2 SCOPE: This [regulation] rule applies to local school boards and local school districts.
 [01-15-99; 6.20.5.2 NMAC - Rn, 6 NMAC 2.2.3.2, 06-14-01; A, 11-13-09]

6.20.5.3 STATUTORY AUTHORITY: This [regulation] rule is promulgated pursuant to Section 22-18A-4, NMSA 1978.
 [01-15-99; 6.20.5.3 NMAC - Rn, 6 NMAC 2.2.3.3, 06-14-01; A, 11-13-09]

6.20.5.6 OBJECTIVE: This [regulation] rule establishes procedures and requirements to provide principal and interest due on outstanding school district general obligation indebtedness in the event ad valorem taxes or other revenues of the public school district are either insufficient or are not received by the public school district at the time due or anticipated.
 [01-15-99; 6.20.5.6 NMAC - Rn, 6 NMAC

2.2.3.6, 06-14-01; A, 11-13-09]

6.20.5.8 FINANCIAL CRITERIA: If it is determined by the [state department of public education] public education department and the department of finance and administration that there are insufficient ad valorem taxes or other public school district revenues to meet a payment of principal or interest due on public school district general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes or other revenues to be used to make any such payment will be delayed and not available to make the payment when due, the [state department of public education] public education department and the department of finance and administration may request the state board of finance to direct a temporary transfer of a sufficient amount of money to the public school district general obligation loan fund so that the payment becoming due may be made and a default avoided.
 [01-15-99; 6.20.5.8 NMAC - Rn, 6 NMAC 2.2.3.8, 06-14-01; A, 11-13-09]

6.20.5.9 REQUIREMENTS: Application procedures:

A. A public school district may apply for a loan from the public school district general obligation bond loan fund upon certification by the local board of education that there are insufficient ad valorem taxes or other school district revenues to meet the payment of principal or interest or both, due on the school district's general obligation indebtedness or to meet other obligations arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes to make such payment will be delayed and not be available to make the payment when due.

B. The application will be made on forms developed by the [state department of public education] public education department and will require the following minimum information from the applicant public school district:

- (1) a detailed explanation as to the reasons for the public school district's inability to meet its general obligation indebtedness;
- (2) a certified statement from the local board of education of the public school district's current financial status;
- (3) a detailed explanation on efforts taken by the public school district to generate additional revenues to meet its general obligation indebtedness;
- (4) a proposed repayment schedule by the applicant public school district must be submitted with the application; such proposed repayment schedule shall be for a

period of time not to exceed five (5) years.

C. The application must be submitted to the ~~[state department of public education]~~ public education department forty five (45) days prior to the due date of the payment on the public school district's general obligation indebtedness. An application submitted after the forty-five (45) days will be considered only upon the ~~[state department of public education's]~~ public education department's determination that the public school district has demonstrated compelling circumstances.

D. The applicant public school district must meet the financial criteria set forth in Sections 8 and 9 of this ~~[regulation]~~ rule.

E. The applicant shall provide any other information required by the ~~[state department of public education]~~ public education department to determine a public school district's eligibility for a loan pursuant to the School District Loan Act.

F. With prior approval from the state board of finance, all loans requested by public school districts from the public school district general obligation bonds loan fund shall be made by the ~~[department of public education]~~ public education department.

[01-15-99; 6.20.5.9 NMAC - Rn, 6 NMAC 2.2.3.9, 06-14-01; A, 11-13-09]

6.20.5.10 REPAYMENT PROCEDURES:

A. The loan shall be made for a period of time not to exceed five years with an annual interest rate to be the lesser of five (5) percent or a rate of interest determined by the ~~[state department of education]~~ public education department comply with federal arbitrage requirements.

B. The loan shall be repaid in annual installments as determined by the ~~[state department of public education]~~ public education department in consultation with the department of finance and administration.

C. Notwithstanding, the provisions of Subsections A and B of 6.20.5.10 NMAC, loans made to a public school district to meet its general obligation indebtedness due to late or delayed receipts of ad valorem taxes shall be repaid within ten (10) working days following receipt of these taxes in order to reduce interest expenses.
[01-15-99; 6.20.5.10 NMAC - Rn, 6 NMAC 2.2.3.10, 06-14-01; A, 11-13-09]

6.20.5.11 SEVERABILITY: If any part or application of this ~~[regulation]~~ rule is held invalid, the remainder or its application to other situations or persons shall not be affected.
[01-15-99; 6.20.5.11 NMAC - Rn, 6 NMAC 2.2.3.11, 06-14-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.21.2 NMAC, Sections 1, 2, 3, 6, 7, 9, 10, 11 and 12, effective November 13, 2009.

6.21.2.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department

[01-15-99, 07-30-99; 6.21.2.1 NMAC - Rn, 6 NMAC 2.3.1.1, 05-31-01; A, 11-13-09]

6.21.2.2 SCOPE: This ~~[regulation]~~ rule applies to all public school districts, post-secondary institutions, state supported schools, state agencies, private nonprofit organizations, and other entities receiving state appropriated funds ~~[and/or]~~ or federal funds through the ~~[state department of education (SDE)]~~ department, and for direct grant programs for which the ~~[SDE]~~ department has monitoring and enforcement responsibility and authority. This ~~[regulation]~~ rule does not apply to federal or state funds received through the division of vocational rehabilitation.

[01-15-99; 6.21.2.2 NMAC - Rn, 6 NMAC 2.3.1.2, 05-31-01; A, 11-13-09]

6.21.2.3 STATUTORY AUTHORITY:

A. New Mexico State Constitution, Article XII, Section 6, and the Public School Code, Section 22-1-1, et seq., set forth the responsibilities, powers, and duties of the ~~[state board of education and the state department of education]~~ public education department pertaining to the control, management and direction, including financial direction, distribution of school funds, and financial accounting of all public schools, pursuant to authority and powers provided by law.

B. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, issued under the authority of 31 United States Code (U.S.C.) Sections 503, 1111, and 7501 et. seq. and Executive Orders 8248 and 11541. OMB Circular A-133 was issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among federal agencies for the audits of states, local governments, and non-profit organizations expending federal awards.

C. 20 U.S.C. Section 1231 b-2 (a) provides for any applicant or recipient aggrieved by the final action of the department may, within 30 days of such action by the department, request a hearing alleging a violation of state or federal law, rules, regulations, or guidelines governing

the applicable program in:

(1) disapproving or failing to approve its application or program in whole or in part;

(2) failing to provide funds in amounts in accord with the requirements of law and regulation;

(3) ordering, in accordance with a final state audit resolution determination, the repayment of misspent or misapplied federal funds; or

(4) terminating further assistance for an approved program.

[01-15-99; 6.21.2.3 NMAC - Rn, 6 NMAC 2.3.1.3, 05-31-01; A, 11-13-09]

6.21.2.6 OBJECTIVE: The objective of this ~~[regulation]~~ rule is to establish standard operating procedures covering the audit resolution process (ARP) as it relates to federal and state funds and to set forth the application hearing process as provided for by federal statutes and regulations. These standard operating procedures further set forth the process by which the ~~[state department of education (SDE)]~~ department may enforce federal and state requirements under any applicable program.

[01-15-99; 6.21.2.6 NMAC - Rn, 6 NMAC 2.3.1.6, 05-31-01; A, 11-13-09]

6.21.2.7 DEFINITIONS:

A. "Applicant" means a party requesting a subgrant under a program of the department.

B. "Audit(s)" means an audit(s) of a subgrantee which is either conducted by an independent auditor (certified public accountant) in accordance with the Single Audit Act of 1984, as amended, ~~[and/or]~~ or the Audit Act, Sections, 12-6-1 through 12-6-14 NMSA 1978, or those audits/monitoring reviews/program evaluations conducted by department personnel.

C. "Audit finding" means a written explanation of errors, noncompliance with legal requirements, use of funds for improper purposes, weakness; deficiencies, adverse conditions, or the need for improvement or changes.

D. "Audit recommendation" means a written suggestion/recommendation for specific action to correct a deficient condition, prevent a recurrence of the condition, and to alleviate the adverse effect of the condition or request repayment of funds used improperly.

E. "Audit resolution process" means a method by which audit finding(s) and recommendation(s) are resolved in a uniform and timely manner and within a predetermined time frame.

F. "Crosscutting issues" means audit finding(s) applicable to the overall operation (i.e., internal control,

procurement, inventory, etc.).

G. "Days" means calendar days unless specified as workdays.

H. "Department" means the ~~[state department of education]~~ public education department.

I. "Direct grants" means those federal funds which flow directly from the federal government to a grantee.

J. "Enforcement process" means a mechanism by which the department may enforce the federal ~~and/or~~ or state requirements under any applicable program.

K. "Final letter of determination/notice of intended action" means a letter issued by the department setting forth:

(1) notice of intent to disapprove or failure to approve an application or program in whole or in part;

(2) notice ordering, in accordance with the department audit resolution determination, the repayment of misspent or misapplied federal funds;

(3) notice terminating further assistance for an approved program;

(4) notice of intent to suspend partially or entirely the distribution of federal funds; and

(5) notice ordering in accordance with a final state audit resolution determination, compliance with the audit resolution request.

L. "Grant" means an award of financial assistance in the form of money to an eligible grantee.

M. "Grantee" means a government or other legal entity to which a grant is awarded.

N. "Management decision" means the evaluation by the department of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

O. "Secretary" means the secretary of the federal awarding agency.

P. ~~["State superintendent"~~ means the ~~state superintendent of public instruction]~~ "Secretary of public education" means the New Mexico secretary of public education appointed by the governor and confirmed by the senate.

Q. "Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by the department to an eligible subgrantee.

R. "Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the department for the use of the funds provided.

S. "Written ruling" means a letter issued by the department outlining the department's position based on the results of the hearing as presented by the hearing officer.

[01-15-99; 6.21.2.7 NMAC - Rn, 6 NMAC 2.3.1.7, 05-31-01; A, 11-13-09]

6.21.2.9 APPLICANTS OR SUBGRANTEES AGGRIEVED BY FINAL LETTER OF DETERMINATION OR NOTICE OF INTENDED ACTION - OPPORTUNITY FOR A HEARING

A. Scope: The procedures set forth in this section shall be implemented to comply with the statutory and regulatory requirements of 20 U.S.C. Section 1231 b-2(a) and 34 CFR 76.401 so as to afford the opportunity for a hearing to any applicant or subgrantee aggrieved by a final action of the department and alleging a violation of state or federal law, rules, regulations, or guidelines governing the applicable program with regard to the department's (i) disapproving or failing to approve its application or program in whole or in part; (ii) failing to provide funds in amounts in accord with the requirements of laws and regulations; (iii) ordering, in accordance with the department's audit resolution determination, the repayment of misspent or misapplied federal funds; or (iv) terminating further assistance for an approved program.

(1) The department will, if required by federal statute or regulation, provide an opportunity for a hearing prior to disapproval of the application.

(2) If the department is not required to provide the opportunity for a hearing prior to the disapproval of the application, the department will provide the opportunity for the hearing either before or after disapproval of the application.

B. Procedures

(1) Request for hearing: The applicant or subgrantee shall request in writing the hearing within thirty (30) days of the date of the final letter of determination or notice of intended action.

(2) Availability of records: The department shall make available, at reasonable times and places, to each applicant or subgrantee all records of the department pertaining to the review or appeal the applicant is conducting, including records of other applicants.

(3) Hearing: Within thirty (30) days after the department receives a request for a hearing pursuant to this section, the department shall hold a hearing on the record and shall review its action or proposed action. The following procedures shall apply:

(a) a written notice of hearing to all parties;

(b) an opportunity for all parties to participate in the hearing;

(c) prohibition of ex parte contacts between one party and the impartial hearing officer;

(d) an impartial hearing officer,

who has not taken part in the investigation and who is not under the supervision of a department employee who did, shall be appointed by the ~~[state superintendent]~~ secretary of public education;

(e) the right of the parties to appear with counsel;

(f) the right to present oral and written evidence and to conduct cross examinations;

(g) the right to submit proposed findings of fact and conclusions of law; and

(h) the compiling and availability of a record upon which the impartial hearing officer's recommended findings of fact, conclusions of law, and decision are based.

(4) Ruling

(a) No later than ten (10) days after the hearing, the department shall issue its written ruling, including findings of fact and reasons for the ruling.

(b) If the department determines that its action or proposed action in whole or in part was contrary to federal or state statutes, regulations, and guidelines governing the applicable program, the department shall rescind its action or proposed action in whole or in part.

(5) Appeal to the secretary: If the department does not rescind its final action or proposed action after a review under this section, the applicant may appeal to the secretary. The applicant shall file a notice of the appeal with the secretary within twenty (20) days after the applicant has been notified by the department of the department's ruling.

C. Repayment: Repayment of misspent or misapplied federal funds, as determined through the audit resolution determination, shall be made from nonfederal sources or from federal funds, no accountability for which is required to the federal government.

[01-15-99; 6.21.2.9 NMAC - Rn, 6 NMAC 2.3.1.9, 05-31-01; A, 11-13-09]

6.21.2.10 FEDERAL FUNDS ENFORCEMENT PROCESS

A. Scope

(1) This section shall apply only to those actions encompassed by 20 U.S.C. 1232 c(b) and shall not apply to those actions encompassed by 20 U.S.C. Section 1231 b-2(a) that are subject to the procedures set forth in section 9.

(2) Notwithstanding any other remedies available to the department, and specifically reserving such remedies, the department, in order to enforce the federal requirements under any applicable program, may:

(a) withhold approval, in whole or in part, of an application for funds under an applicable program until the department is satisfied that the federal requirements will be met; except the department shall not finally disapprove an application unless the

department provides an opportunity for a hearing before an impartial hearing officer and such officer determines that there has been a substantial failure to comply with any of such requirements;

(b) suspend payments, in whole or in part, under an applicable program if the department has reason to believe that there has been substantial failure to comply with any of such requirements;

(i) the department shall not suspend such payments until fifteen (15) days after the department provides an opportunity to show cause why such action should not be taken;

(ii) no suspension shall continue in effect longer than sixty (60) days unless the department within such period provides the notice for a hearing required under Subsection A., Paragraph (2), Subparagraph (c) of 6.21.2.10 NMAC;

(c) withhold payments, in whole or in part, under any such program if the department finds, after reasonable notice and opportunity to be heard before an impartial hearing officer, that the subgrantee has failed substantially to comply with any such requirements; any withholding of payments shall continue until the department is satisfied that there is no longer a failure to comply substantially with any of such requirements.

B. Procedures

(1) When a hearing is required under these [regulations] rules or other applicable federal requirements, the [state superintendent] secretary of public education shall appoint an impartial hearing officer to conduct the proceeding. The impartial hearing officer shall be an impartial decision-maker who has not taken part in the investigation and who is not under the supervision of a department employee who did and who shall not have personal, economic, or professional interest in the outcome of the hearing other than the proper application of federal laws, regulations, and policies.

(2) The following procedures shall apply:

(a) a written notice of hearing;

(b) an opportunity for the aggrieved party to be heard; and

(c) a prohibition of ex parte contacts between one party and the impartial hearing officer.

(3) The impartial hearing officer shall issue a written decision that includes findings of fact and conclusions of law.

C. Appeal to the secretary of the United States department of education: Nothing in this chapter shall abrogate any right of appeal to the secretary of the United States department of education or other appropriate federal agency as provided for by federal statute or regulation.

[01-15-99; 6.21.2.10 NMAC - Rn, 6 NMAC

2.3.1.10, 05-31-01; A, 11-13-09]

6.21.2.11 STATE FUNDS ENFORCEMENT PROCESS

A. Scope: This section shall apply to the accountability of state funds where there is a failure to correct a deficiency cited in an audit. The remedies set forth in this section may be used only after the department has requested in writing that the deficiency or deficiencies in question be corrected and there has been a failure to correct the deficiency or deficiencies after a reasonable opportunity to do so. When applicable, the department may avail itself of any of the remedies hereinafter set forth in this section, notwithstanding the fact that other remedies are available to or may have been used by the department.

B. Procedures: In order to enforce the provisions of the Public School Code of the state of New Mexico, Section 22-1-1 et. seq., NMSA 1978, any other applicable state or federal law, or as a result of an unresolved audit finding, the department may, pursuant to applicable state law:

(1) recommend suspension of a local school board which has been designated as its own board of finance from acting as a board of finance if the [state superintendent] secretary of public education reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's control, in accordance the provisions of Sections 22-8-39 NMSA 1978;

(2) disapprove instructional units or administrative functions which are determined to be detrimental to the educational process in accordance with the provisions of Section 22-2-14 NMSA 1978;

(3) suspend from authority and responsibility any local school board, which has notice of disapproval and fails to comply with procedures of Subsection B, Paragraph (2) of 6.21.2.11 NMAC in accordance with the provisions of [Sections] Section 22-2-14[and 22-2-15] NMSA 1978;

(4) institute legal proceedings for violation [and/or] or enforcement of the Public School Code in accordance with the provisions of Sections 22-2-2 and 22-8-42 NMSA 1978;

(5) refer audit finding(s) to the proper law or other enforcement agency (ies) as appropriate;

(6) institute legal proceedings of other enforcement provisions as provided by any applicable state law.

C. Withholding of funds: In accordance with Subsection D of Section 22-8-13, the department shall withhold allotments of funds to any school district where the superintendent has failed to comply with the requirements of Section 22-8-13 NMSA 1978 until the

superintendent complies with and agrees to continue complying with requirements. The following procedures shall apply:

(1) The [state superintendent] secretary of public education or his designee will advise the business manager of the district/charter school of the deficiency(ies) and establish timelines for compliance.

(2) If compliance is not effectuated in accordance with the timeline(s) established in paragraph (1), the director of the school budget planning unit or his designee will advise the district/charter school superintendent that the district/charter school has not made progress toward resolution of the issues. At the discretion of the director of the school budget planning unit, further technical assistance may be provided to the district/charter school.

(3) Upon a determination by the director of the school budget planning unit that the district/charter school has not made adequate progress toward resolution of the issues, the [state superintendent] secretary of public education or his designee will inform the appropriate district/charter school personnel in writing that the district/charter school has been given ample opportunity to correct the deficiencies and progress has not been made. A copy of the letter will also be sent to the local school board or the governance council of the applicable charter school. As a result, the department will begin withholding of funds until the district/charter school has corrected the problem(s) or made significant progress toward the resolution of the problem areas.

~~[D. Reports to the state board of education: The state superintendent shall notify the state board of education if remedies outlined in this section are initiated.]~~

[01-15-99; 6.21.2.11 NMAC - Rn, 6 NMAC 2.3.1.11, 05-31-01; A, 10-15-03; A, 11-13-09]

6.21.2.12 CONFLICTS: If any statute or regulation governing any federal program subject to this [regulation] rule affords procedural rights exceeding those set forth in this [regulation] rule, or otherwise establishes additional or inconsistent requirements, such statutory or regulatory right(s) shall be afforded and such requirements shall govern.

[01-15-99; 6.21.2.12 NMAC - Rn, 6 NMAC 2.3.1.12, 05-31-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.23.3 NMAC, Sections 1, 6, 7, 8, 9, 10, 11 and 12, effective November 13, 2009.

6.23.3.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[12-31-98, 7-30-99; 6.23.3.1 NMAC - Rn, 6 NMAC 11.3.2.1, 06-14-01; A, 11-13-09]

6.23.3.6 OBJECTIVE: This part establishes minimum criteria for the establishment, operation, and oversight of regional education cooperatives[~~;-effectuates the transition of regional center cooperatives to regional education cooperatives;~~] and authorizes the establishment of additional regional education cooperatives if the [state board of education] secretary determines that the establishment and operation of such additional regional education cooperatives will not be detrimental to the delivery of services by the existing regional education cooperatives [or existing regional center cooperatives].

[12-31-98; 6.23.3.6 NMAC - Rn, 6 NMAC 11.3.2.6, 06-14-01; A, 11-13-09]

6.23.3.7 DEFINITIONS

A. "Council" means a regional education coordinating council.

B. "Cooperative" means a regional education cooperative as authorized by the [state board of education] secretary pursuant to this [Regulation] rule.

C. "IDEA-Part B" means Part B of the Education of the Handicapped Act of 1975, amended and redesignated as the Individuals with Disabilities Education Act.

D. "Local school board" means the governing body of a school district.

[E. "State board" means the state board of education as established by Article XII, Section 6 of the constitution of the state of New Mexico.

F. "State department of education" means the state department of public education.

G. "State superintendent" means the superintendent of public instruction.

H. "State-supported educational institution" means an entity defined as a state institution pursuant to Section 22-1-2(Q) NMSA 1978]

E. "Department" means the public education department.

F. "Secretary" means the secretary of public education.

G. "'State agency' or 'state institution'" means an entity enumerated in

Section 22-1-2(X) NMSA 1978.

[12-31-98; 6.23.3.7 NMAC - Rn, 6 NMAC 11.3.2.7, 06-14-01; A, 11-13-09]

6.23.3.8 ESTABLISHMENT OF REGIONAL EDUCATION COOPERATIVES

A. The [state—board] secretary may authorize the existence and operation of one or more cooperatives.

(1) The authorization process is initiated by the receipt of applications and supporting resolutions requesting such authorization by two or more local school boards. By application of their governing authorities, [state-supported—educational institutions] state agencies or state institutions may be included.

(2) No local school board or [state-supported—educational institution] state agency or state institution may be a member of more than one cooperative[; nor may a local school board or state-supported educational institution be a member of both a cooperative authorized pursuant to this regulation and a regional center cooperative established pursuant to 6.23.2 NMAC].

B. Procedures

(1) The [state—department—of education] department shall develop application procedures consistent with the requirements set forth in this [regulation] rule. Applications submitted to the [state board] secretary requesting authorization for the existence and operation of a cooperative must address the following minimum criteria:

(a) an accurate description of the geographical service area of the proposed cooperative;

(b) a detailed description of the services contemplated;

(c) a detailed description of why the services contemplated cannot be delivered by any currently existing cooperative(s) [or—regional—center cooperative(s)], together with documentation that any existing cooperative(s) [or regional center cooperative(s)] within the proposed geographical service area have been consulted regarding the proposed cooperative and the recommendation of the existing cooperative(s) [or regional center cooperative(s)] as to the establishment of the proposed cooperative;

(d) a detailed description of the ability of the proposed cooperative to provide the proposed services, including the history of needs within the geographical service area of the proposed cooperative and the historical ability of the applicants to meet those needs;

(e) a description of the management capabilities, including fiscal management, of the proposed cooperative, including the history of needs within the geographical service area of the proposed

cooperative and the historical ability of the applicants to meet those needs;

(f) a showing of the commonality of missions among the applicants;

(g) a cost/benefit fiscal analysis of the proposed cooperative;

(h) the proposed budget for the first year of the cooperative's operation;

(i) proposed policies and procedures of the cooperative; and

(j) the acknowledgment by the local school boards and governing authorities of [state-supported educational institutions] state agencies or state institutions that participation in a cooperative will not relieve said local school boards and governing authorities of state and federal statutory and regulatory responsibilities.

(2) After review of the application, the [state superintendent] secretary may request such additional information as he or she deems necessary.

(3) Within ninety (90) days after receipt of the application, the [state board] secretary will review the application and will either grant or deny the application for authorization of the cooperative. In making [its] the determination, the [state board] secretary will determine whether the authorization of the cooperative is in the best interests of public education in the school districts seeking such authorization and is in the best interests of public education in the state, and will consider the following factors:

(a) relationship of the application to the accreditation status of the applicants;

(b) relationship of the application to educational improvement within the geographical service area of the proposed cooperative;

(c) sufficient size and scope of proposed programs and services;

(d) sufficient management capacity;

(e) sufficient fiscal capacity and management;

(f) relationship of geographical service area to size and scope of proposed programs and services; and

(g) such other factors deemed relevant by the [state superintendent] secretary.

(4) Upon authorization by the [state board] secretary for the existence and operation of a cooperative, the local school boards and governing authorities of the [state-supported educational institutions] state agencies or state institutions shall enter into a joint powers agreement. The joint powers agreement, in addition to meeting all requirements of the Joint Powers Agreements Act, shall address those components as may be required by the [state superintendent] secretary and shall be subject to the approval of the [state superintendent] secretary. The joint powers agreement shall further:

(a) establish a mechanism

whereby participating local school boards and governing authorities of ~~[state-supported educational institutions]~~ state agencies or state institutions electing to cooperatively participate in programs funded by monies other than IDEA-Part B notify the council and the ~~[state department of education]~~ department;

(b) include a provision requiring participating local school boards and governing authorities of ~~[state-supported educational institutions]~~ state agencies or state institutions desiring to participate in cooperative programs funded by monies other than IDEA-Part B to execute a memorandum of understanding in accordance with requirements established by the ~~[state superintendent]~~ department.

C. Changed circumstances

(1) An authorized cooperative shall notify the ~~[state superintendent]~~ secretary upon receipt of notice by a local school board or governing authority of a ~~[state-supported educational institution]~~ state agency or state institution that said local school board or governing authority wishes to withdraw from membership in the cooperative.

(a) The ~~[state board]~~ secretary will review the cooperative and will determine whether said cooperative will continue to meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC.

(b) If the ~~[state board]~~ secretary determines that the cooperative will no longer meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC, the ~~[state board]~~ secretary may order the dissolution of the cooperative.

(2) An authorized cooperative shall further notify the ~~[state superintendent]~~ secretary upon receipt of notice by a local school board or governing authority of a ~~[state-supported educational institution]~~ state agency or state institution that the local school board or governing authority wishes to establish membership in the cooperative.

(a) The ~~[state board]~~ secretary will review the cooperative and will determine whether said cooperative will continue to meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC.

(b) If the ~~[state board]~~ secretary determines that the cooperative will continue to meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC, the ~~[board]~~ secretary will allow the requesting entity(ies) to participate and will establish the terms thereof.

[12-31-98; 6.23.3.8 NMAC - Rn, 6 NMAC 11.3.2.8, 06-14-01; A, 11-13-09]

6.23.3.9 REGIONAL EDUCATION COORDINATING COUNCIL

A. Each cooperative shall be governed by a regional education

coordinating council ("council").

(1) Each council will develop and adopt by-laws for the purpose of the governance of the cooperative.

(2) The by-laws shall include the following provisions:

(a) procedures for electing a council chairperson;

(b) the term of office for the council chairperson;

(c) procedures to establish any committees the council may deem necessary or desirable; and

(d) procedures to amend the by-laws as the council deems necessary or desirable.

(3) The council shall be composed of the superintendents or chief administrative officers of each local school district or ~~[state-supported educational institution]~~ state agency or state institution participating in the cooperative.

(4) Members of each council shall elect a chairperson from its members.

(5) Meetings of the council shall be held at the call of the chairperson, subject to the council's open meetings policy and the Open Meetings Act, Sections 10-15-1 through 10-15-4, NMSA 1978.

(6) A meeting of a majority of the members of the council constitutes a quorum for the purpose of conducting business.

B. The council shall oversee the operation of the cooperative and shall develop a manual of policies and procedures governing the operation of the cooperative. At the direction of the council, the cooperative shall provide:

(1) education-related services to ~~[all entities participating in]~~ members of the cooperative;

(2) technical assistance and staff development opportunities to ~~[all entities participating in]~~ members of the cooperative;

(3) cooperative purchasing capabilities and fiscal management opportunities to ~~[all entities participating in]~~ members of the cooperative; ~~[and]~~

(4) such additional services to participating entities as may be determined by the council to be appropriate; ~~[and]~~

(5) revenue-generating education-related services to nonmembers when the council determines that the provision of such services will not interfere with the cooperative's ability to fulfill its responsibilities to its members.

C. The council shall have such other powers and duties as are reasonably necessary to carry out the purpose of the Regional Cooperative Education Act, Sections 22-2B-1 through ~~[22-2B-6]~~ 22-2B-5 NMSA 1978 and which are not inconsistent with the provisions of applicable state or federal statutes or regulations.

D. Each council shall hire an executive director and necessary

additional staff and, subject to the provisions of law, fix the salaries of all employees.

(1) The council shall ensure that all employees meet all applicable certification or licensure requirements.

(2) The council shall further ensure that all applicable provisions of the School Personnel Act, Chapter 22, Article 10A NMSA 1978 are adhered to and reflected in its policies and procedures.

(3) The council shall include within its policies and procedures the following policies relating to employees:

(a) the salary schedule(s) for all employees of the cooperative;

(b) policies related to the accrual and utilization of leave by employees; and

(c) policies relating to performance evaluations of employees.

(4) The administrative and supervisory functions of the council shall be delegated to the executive director.

(5) The council shall, subject to the provisions of law, approve or disapprove the employment, termination, or discharge of all employees and certified school personnel of the cooperative upon a recommendation of employment, termination, or discharge by the executive director. Any employment, termination, or discharge without the prior recommendation of the executive director is void.

[12-31-98; 6.23.3.9 NMAC - Rn, 6 NMAC 11.3.2.9, 06-14-01; A, 11-13-09]

6.23.3.10 ACCOUNTABILITY

A. Fiscal and budget accountability

(1) The ~~[state superintendent]~~ department shall develop procedures for personnel and program reporting for the cooperative(s). Each cooperative shall be required to adhere to such procedures. The reporting shall include the cooperative's evaluation of the effectiveness of the technical assistance and other services provided to members of the cooperative and to any nonmember public and private entities to which the cooperative provided educational services.

(2) The ~~[state superintendent]~~ department shall develop procedures for budgets and fiscal reporting. Each cooperative shall be required to adhere to such procedures. Such procedures shall ensure compliance with the requirements of all applicable state and federal statutes and regulations.

(3) The ~~[state superintendent]~~ department shall establish procedures, including timelines, for the preparation of cooperative budgets and the approval of said budgets by the ~~[state department of education]~~ department. Each cooperative shall be required to adhere to such procedures.

(4) The cooperative shall assure

compliance with the provisions of the Procurement Code, Sections 13-1-28 et seq. NMSA 1978.

(5) The cooperative shall assure compliance with all applicable department of finance and administration regulations.

B. The [state superintendent] department shall further develop procedures to ensure that the cooperatives are assessed and evaluated in accordance with the applicable requirements of Section [22-2-2(V)] 22-2-2(F) NMSA 1978.

[12-31-98; 6.23.3.10 NMAC - Rn, 6 NMAC 11.3.2.10, 06-14-01; A, 11-13-09]

6.23.3.11 ENFORCEMENT OF REQUIREMENTS

A. The [state superintendent] secretary shall give written notification to a cooperative and its member entities of any failure of the cooperative to meet applicable requirements in any of its programs or activities. The notice shall specify the deficiency. Within thirty days after receipt of the notice of failure to meet requirements, the council shall:

(1) comply with the specific and attendant requirements; or

(2) submit plans satisfactory to the [state superintendent] secretary to meet such requirements.

B. The [state board] secretary shall suspend from authority and responsibility any council which has had notice of deficiency(ies) pursuant to Subsection A of 6.23.3.11 NMAC and fails to comply with procedures set forth in Subsection A, Paragraphs (1) and (2) of 6.23.3.11 NMAC. [The state superintendent shall act in lieu of the suspended council until the state board removes the suspension.] The secretary or the secretary's designee shall act in lieu of the suspended council until the suspension is removed.

C. To suspend a council, the [state board] secretary shall deliver to the council an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date, and place for a public hearing, prior to the beginning of suspension, to be held by the [state board] secretary or the secretary's designee, at which the council may appear and show cause why it should not be suspended. Within five days after the hearing, the [state board] secretary shall continue, modify or withdraw the alternative order.

D. [Within one-hundred eighty (180) days after the entry of an order of suspension by the state board, the state superintendent shall recommend to the state board that the order of suspension be withdrawn or that the order of suspension be continued for an additional one-hundred

eighty (180) day period.] Within one-hundred eighty (180) days after the entry of the order of suspension, the secretary shall withdraw the order of suspension or continue the order of suspension for an additional period of up to one-hundred eighty (180) days.

(1) Upon the [state board's] acceptance of a recommendation that the order of suspension be withdrawn, the secretary's withdrawal of the order of suspension, the council shall be restored to its full authority and responsibility.

(2) Upon [a recommendation] the secretary's determination that the order of suspension be continued for an additional period of up to one-hundred eighty (180) [day period, the state board] days, the secretary shall afford the council the opportunity for a hearing within a reasonable time. At this hearing, the council may appear and show cause why the order of suspension should not be continued. After the hearing, the [state board] secretary shall continue the order of suspension for a period not to exceed one-hundred eighty (180) days or withdraw the order of suspension.

E. Within one-hundred eighty (180) days after the entry of an order of continued suspension [by the state board] pursuant to Subsection D, Paragraph (2) of 6.23.3.11 NMAC, the [state superintendent] shall recommend to the state board] secretary shall determine that the order of suspension be withdrawn or that the council should appear and show cause why the order of suspension should not be made permanent.

[The state superintendent shall recommend to the state board] secretary shall determine that the order of suspension be withdrawn, the council shall be restored to its full authority and responsibility.

(2) Upon a recommendation that the order of suspension be made permanent, the state board] Upon the secretary's determination that the council should appear and show cause why the order of suspension should not be made permanent, the secretary shall afford the council the opportunity for a hearing within a reasonable time. At this hearing, the council may appear and show cause why the order of suspension should not be made permanent. After the hearing, the [state board] secretary shall withdraw the order of suspension or make the order of suspension permanent. A permanent order of suspension shall result in the dissolution of the cooperative.

[12-31-98; 6.23.3.11 NMAC - Rn, 6 NMAC 11.3.2.11, 06-14-01; A, 11-13-09]

6.23.3.12 [COOPERATIVE RESOURCES] FUNDING SOURCES

A. [Cooperative resources] Funding sources may include funds from federal grant allocations and general revenues of the membership and revenue

from revenue-generating education-related services to nonmembers.

B. [In addition, the state department of education may allocate IDEA-Part B discretionary monies for start-up costs, and annual incentives. These monies shall be allocated on a prorated bases for educational agencies with 300 or less students on their IDEA-Part B annual student census.] With council approval, a cooperative may apply for and receive public and private grants, gifts, donations, bequests and devises and use them to further the purposes and goals of the cooperative.

C. [An annual weighted system which gives consideration to rural equity shall be established.] All revenues shall be received by the cooperative and budgeted in accordance with procedures established by the department in accordance with Subsection A, Paragraph (2) of 6.23.3.10 NMAC.

[12-31-98; 6.23.3.12 NMAC - Rn, 6 NMAC 11.3.2.12, 06-14-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.30.3 NMAC, Sections 1, 3, 7, 8, and 9, effective November 13, 2009.

6.30.3.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[01-01-97, 07-30-99; 6.30.3.1 NMAC - Rn, 6 NMAC 3.4.1.1, 05-31-01; A, 11-13-09]

6.30.3.3 STATUTORY AUTHORITY: This [regulation] rule is being promulgated pursuant to Sections 22-2-1 22-2-2, 22-2-8.8, [22-8-2] 22-2-8.14, 22-12-2, 22-12-4, 22-13-1.1 and 43-1-3, New Mexico Statutes Annotated, 1978 Compilation.

[01-01-97, 07-30-99; 6.30.3.3 NMAC - Rn, 6 NMAC 3.4.1.3, 05-31-01; A, 07-15-02; A, 11-13-09]

6.30.3.7 DEFINITIONS: [RESERVED]

A. "Credential equivalent to a high school diploma" means a New Mexico high school diploma which is issued upon satisfactory passage of the GED.

B. "Department" means the public education department.

C. "GED" means the general educational development test which is a group of rigorous tests administered at designated testing centers that measure high school-level skills and knowledge and result in the issuance of a New Mexico high school diploma to the examinee when passed.

D. "Secretary" means the secretary of the New Mexico public

education department.

E. "State superintendent" means the state superintendent of public instruction who, until September 23, 2003, when Article 12, Section 6 of the New Mexico Constitution was amended, was the chief administrative officer of the state board of education and also supervised and directed the operation of the state department of public education.

F. "Superintendent" means the chief executive officer of a school district or a charter school.

[6.30.3.7 NMAC – N, 11-13-09]

6.30.3.8 T E S T I N G ELIGIBILITY AND USE OF THE UNDERAGE FORM:

A. Any individual whether or not a New Mexico resident[;] who is at least 16 years of age, has not graduated from an accredited high school and [who] is not currently enrolled in an accredited high school is eligible to take the GED tests, [if:]

[1] [Reserved]

(2) the individual is a minimum of 16 years of age[;]

B. Any individual who seeks to withdraw from public school and take the GED before their 18th birthday will not be permitted to take the GED unless that individual:

(1) produces a signed letter of hardship from their parent or guardian that describes the reason for withdrawing from school prior to attaining 18 which must be by reason of a verifiable hardship;

(2) obtains written approval from that individual's superintendent or superintendent's designee to withdraw from school based upon the letter of hardship and attached supporting document required by Paragraph (3) of Subsection B of 6.30.3.8 NMAC;

(3) attaches documents obtained from that individual's parent or guardian supporting one of the following categories of hardship justifying the individual's need to withdraw from school:

(a) medical reasons (e.g., physical or psychological);

(b) the necessity to work to support self or family by reason of death or serious illness of a parent, guardian or family member that resulted in a financial hardship;

(c) any other reason deemed persuasive and appropriate by the local superintendent;

(4) a student whose parents or guardians have provided notice to the department of their having established a home school for that student.

[B:] C. [If the individual is under 18 years of age, the following conditions must also be met:] An individual 16 or 17 years of age enrolled in a school district or charter school who seeks to

withdraw from school and take the GED test, must obtain and present to the local GED chief or alternate examiner a department underage form:

(1) [An underage form completed by the local superintendent (or his/her designee) authorizing testing must be presented to the local GED chief or alternate examiner.] completed by the local superintendent or superintendent's designee authorizing the testing;

(2) [The aforementioned form shall contain the individual's birth date, date of withdrawal from school, and signature from the parent or legal guardian. It shall be executed in triplicate form.] executed in triplicate and containing the individual's birth date, date of withdrawal from school, and signature from the parent or legal guardian;

(3) [The underage form (described in Subsection B, Paragraphs (1) and (2) of 6.30.3.8 NMAC) must be completed and presented to the local GED chief or alternate examiner. One copy is to be kept by the local school district, one copy is kept by the local GED chief or alternate examiner; the remaining part will be forwarded with the applicant's passing test scores to the state GED testing office.] a signed copy of which department form shall be kept by the local school district or charter school, a signed copy of which shall be kept by the local GED chief or alternate examiner, and the remaining signed copy of which shall be forwarded with the examinee's passing test scores to the department's GED testing office.

[C:] D. [Individuals—detained at a New Mexico juvenile correctional institution or a juvenile justice division facility operated by the children youth and family department, will be permitted to take the GED tests at a minimum age of 16 provided that they receive an authorization to do so from the warden, director or educational director of that institution or facility.] Individuals detained at a New Mexico juvenile correctional institution or a juvenile justice division facility operated by the children youth and family department, will be permitted to take the GED tests at age 16 or 17 only when they request and receive a written approval to take the tests from the warden, director or educational director of that institution or facility. [He/she] Such individuals will receive the New Mexico high school diploma upon successful completion of the GED tests. No other consent to take the GED tests is required.

[D:] E. [An individual enrolled in a state institution under the authority of the secretary of the health department will be permitted to take the GED tests at a minimum age of 16 provided that they receive a recommendation to do so from the director of the facility where he/she is

enrolled or from the educational director of that facility.] An individual enrolled in a state institution under the authority of the secretary of the health department will be permitted to take the GED tests at age 16 or 17 only when they request and receive a written approval to take the tests from the director of the facility where the examinee is enrolled or from the educational director of that facility. No other consent to take the GED tests is required.

[E:] E. [Individuals enrolled in any other state institution will be permitted to take the GED tests at a minimum age of 16 provided that they receive a recommendation to do so from the director of the facility where he/she is enrolled or from the educational director of that facility.] Individuals enrolled in any other state institution will be permitted to take the GED tests at age 16 or 17 only when they request and receive a written approval to take the tests from the director of the facility where the examinee is enrolled or from the educational director of that facility. No other consent to take the GED tests is required.

[F:] G. Proper identification in the form of a state or other government-issued picture ID such as a driver's license, passport, state identification card, must be presented to the GED chief or alternate examiner before testing may begin in order to determine identity, date of birth, and residency (residency must be established in order to determine the proper state for release and forwarding of the GED test scores to the state of residency). Additionally, the identification submitted by an applicant must verify either their signature or their social security number.

H. A home school student of age 16 or 17 seeking to take the GED tests shall obtain and present to the GED testing center examiner an underage form signed by the student's parent or guardian verifying that a home school notification and establishment form concerning that student has been filed with the department pursuant to 6.81.3 NMAC and Section 22-2-2.1 NMSA 1978.

I. 16 or 17 year old nonresidents seeking to take GED tests in New Mexico must produce hardship documentation and duly signed underage forms as required in this section.

J. A GED examinee is permitted to take the GED tests no more than three times in a calendar year and such scores attained shall be valid for three years from the initial date of testing. If the examinee fails to pass the GED tests within the three year period, the scores will be considered invalid and the examinee must start the GED testing all over.

K. GED examinees taking the Spanish language version shall not be required to take the English as a second

language or ESL test in order to receive a New Mexico high school diploma. [03-03-81, 07-20-93, 01-01-97, 07-30-99; 6.30.3.8 NMAC - Rn, 6 NMAC 3.4.1.8, 05-31-01; A, 07-15-02; A, 11-13-09]

6.30.3.9 [PROCEDURE:] PASSING SCORES AND ISSUANCE OF HIGH SCHOOL DIPLOMAS:

A. Upon successful completion of the GED tests, GED test scores will be released in accordance with the current GED examiners manual. Successful completion is defined as:

(1) obtaining a minimum standard score of 410 on each test in the battery, and

(2) obtaining an average standard score of at least 450 on the tests in the battery for a minimum total score of 2250.

B. The local chief or alternate examiner will send the individual an official report of scores he/she attained on the GED tests.

C. A New Mexico resident who has successfully passed the GED tests and is at least 16 years of age will receive the New Mexico high school diploma issued by the [state board of education] secretary through the [state] department's GED testing office. Only New Mexico residents who have successfully passed the GED tests will be eligible to receive the New Mexico high school diploma. Residents of other states will have their GED test scores forwarded to their state of residency.

D. A New Mexico resident who has passed the GED tests and has also met the requirements for a local high school diploma will receive the local high school diploma instead of the New Mexico high school diploma issued by the [state board of education] secretary through the [state] department's GED testing office.

E. Except for a school age person who is detained or enrolled in a state institution, a New Mexico resident who has passed the GED tests and has received a GED certificate, may as permitted by law enroll in any public school in New Mexico for the purpose of obtaining a school[-] district or charter school issued high school diploma, provided [he/she] the examinee has not yet attained the age of 21. Pursuant to [Section F] Subsection E of 6.30.3 NMAC, the enrollment exception contained in this [section] subsection shall not apply to a person enrolled in a state institution under the authority of the secretary of health.

F. Any school age individual who is a "client" as defined in Section 43-1-3 NMSA 1978 and is in a state institution under the authority of the secretary of the health department, shall have a right to attend public school in the school district in which [he is a] the client is located if:

(1) the school age person has been

recommended for placement in a public school by the educational appraisal and review committee of the district in which the institution is located; or

(2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education [regulations of the state board of education] rules of the department.

G. A [state board of education] secretary-issued New Mexico high school diploma awarded by reason of an individual having obtained passing scores on the GED tests shall be equivalent to a high school diploma or a New Mexico diploma of excellence issued by a school district pursuant to Section [22-2-8.4] 22-13.1.1 NMSA 1978.

H. In those instances in which an individual received a passing GED score prior to September 23, 2003, duplicate New Mexico high school diplomas will continue to be issued by the state superintendent and not the secretary.

I. Any student identification number issued to a public school student shall be included on all GED certificates issued by the department.

[01-31-72, 06-12-73, 01-11-78, 03-03-81, 07-20-93, 01-01-97, 07-30-99; 6.30.3.9 NMAC - Rn, 6 NMAC 3.4.1.9, 05-31-01; A, 07-15-02; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.30.4 NMAC, Sections 1, 2, 3, 6, 8 and 9, effective November 13, 2009.

6.30.4.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[12-31-98, 07-30-99; 6.30.4.1 NMAC - Rn, 6 NMAC 4.6.1.1, 05-31-01; A, 11-13-09]

6.30.4.2 SCOPE: This [regulation] rule governs licensure for those individuals delivering instruction in driver education in the public schools.

[12-31-98; 6.30.4.2 NMAC - Rn, 6 NMAC 4.6.1.2, 05-31-01; A, 11-13-09]

6.30.4.3 STATUTORY AUTHORITY: This [regulation] rule is adopted pursuant to Sections 22-2-1 and 22-2-2 NMSA 1978 and subsection L of Section 66-7-506, NMSA, 1978.

[12-31-98; 6.30.4.3 NMAC - Rn, 6 NMAC 4.6.1.3, 05-31-01; A, 11-13-09]

6.30.4.6 OBJECTIVE: To establish [regulations] rules developed cooperatively by the [state department of education] public education department

and traffic safety bureau to implement the statutory requirement (66-7-506(L), NMSA 1978) that secondary schools must offer classroom instruction in defensive driving as an elective course for students and to develop licensure requirements for instructors of driver safety education to ensure that instruction is provided by trained and qualified teachers.

[12-31-98; 6.30.4.6 NMAC - Rn, 6 NMAC 4.6.1.6, 05-31-01; A, 11-13-09]

6.30.4.8 IMPLEMENTATION:

A. Required qualification - driver safety instruction (classroom): Any individual teaching a driver education course in a New Mexico public school must:

(1) possess a valid New Mexico [secondary] teacher license appropriate for the age of students; and

(2) possess a valid New Mexico driver's license; and

(3) be free of any DWI convictions for the past five years; and

(4) possess a certificate issued by the traffic safety bureau indicating completion of training in classroom instruction.

B. Required qualification - driver safety instructor (behind the wheel): Any individual providing behind the wheel instruction for elective credit in a public school must:

(1) meet the qualifications listed under Subsection A of 6.30.4.8 NMAC; and

(2) possess a certificate issued by the traffic safety bureau indicating completion of 40 hours of training in behind the wheel instruction.

[12-31-98; 6.30.4.8 NMAC - Rn, 6 NMAC 4.6.1.8, 05-31-01; A, 11-13-09]

6.30.4.9 COMPLIANCE MONITORING RESPONSIBILITIES:

The [state department of education] public education department and the traffic safety bureau and the motor vehicle division have agreed to cooperate in the following manner to monitor compliance with this [regulation] rule:

A. The [state department of education] public education department will monitor the requirement requiring instructions to have a current secondary teaching license.

B. With the cooperation of the [state department of education] public education department, the motor vehicle division will monitor the requirement that the instructor has a valid drivers license and [if] is free from DWI convictions for 5 years.

C. With the cooperation of the [state department of education] public education department, the traffic safety bureau will monitor the requirement that instructors [posses] possess the training certificate. Temporary certificates - schools

instructor: The traffic safety bureau may establish procedures for the issuance of temporary certificates based on criteria established by the bureau.

[12-31-98; 6.30.4.9 NMAC - Rn, 6 NMAC 4.6.1.9, 05-31-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.30.5 NMAC, Sections 1, 2, 3, 8, 9, 10, 11, 12, 13, 14 and 15, effective November 13, 2009. The part name is also amended.

PART 5 OPTIONAL FULL-DAY KINDERGARTEN ~~LITERACY READINESS~~ PROGRAM

6.30.5.1 ISSUING AGENCY:

[New Mexico State Board of Education] Public Education Department
[6.30.5.1 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.2 SCOPE:

This [regulation] rule applies to public schools receiving full-day kindergarten state funding.
[6.30.5.2 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.3 STATUTORY AUTHORITY:

Subsection B of Section 22-2-1 and [Subsection E of Section 22-2-2 NMSA 1978] Subsection D of Section 9-24-8 NMSA 1978.
[6.30.5.3 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.8 PROGRAM ~~ELIGIBILITY~~ ELIGIBILITY:

[A.] The number of early childhood education program units is determined by multiplying the early childhood MEM by the cost differential factor 1.44. Students enrolled in full-day kindergarten programs shall be counted for 1.0 early childhood MEM (Section 22-8-19 NMSA 1978).

[B.] ~~Full-day kindergarten programs will be phased-in starting with the 2000-2001 school year. Priority will be given to schools that:~~

(1) ~~serve students in schools in need of improvement as defined and identified by the state board of education; and~~

(2) ~~serve the highest proportion of students most in need as measured by poverty and other at-risk factors;~~

[6.30.5.8 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.9 STUDENT ~~ELIGIBILITY AND~~ PARTICIPATION

A. A student must be at least five years of age prior to 12:01 a.m., on September 1 of that school year (Subsection M of Section 22-8-2 NMSA 1978) to participate in a full-day kindergarten program.

B. [Subject to funding availability, and state department of education program approval;] All public school districts will offer full-day kindergarten programs. Such programs will be offered to kindergarten students on a voluntary basis. No parent will be required to send his/her child to a full-day kindergarten program.
[6.30.5.9 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.10 LENGTH OF SCHOOL DAY-MINIMUM:

A. For the 2009-2010 school year, students in full-day kindergarten programs must be in school-directed programs, exclusive of lunch, for a minimum of five and one-half hours per day or nine hundred hours per year (Section 22-2-8.1 NMSA 1978).

B. For the 2010-2011 and subsequent school years, students in full-day kindergarten programs must be in school-directed programs, exclusive of lunch, for a minimum of five and one-half hours per for a minimum of 180 school days or for a minimum of 150 school days for districts on alternative schedules (Section 22-2-8.1 NMSA 1978 and 6.10.5 NMAC).
[6.30.5.10 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.11 PROGRAM ELEMENT: INSTRUCTION

A. Public schools providing full-day kindergarten programs, utilizing state funding, will include:

(1) a comprehensive research-based early literacy program that:

(a) identifies the concepts and skills necessary to establish the foundation of success in early reading;

(b) includes instructional strategies that ensure children learn identified concepts and skills; [and]

(c) [Has an] includes developmentally appropriate early literacy assessment; and

[(2) Key]

(d) includes key early literacy skills instruction, e.g. language development, vocabulary development, auditory comprehension, appreciation of stories and books, writing [and the] concepts of print, alphabet [and] knowledge, letter sounds [and], phonemic awareness[;] and beginning phonics; [and]

[(3)] (2) child-centered programs based on developmentally appropriate teaching practices that:

(a) support the growth of social

and emotional competence; and

(b) are culturally and linguistically appropriate;

(3) a sequential comprehensive, developmentally appropriate early mathematics program that:

(a) identifies the concepts and skills necessary to establish the foundation of success in early mathematics;

(b) includes instructional strategies that ensure children learn identified concepts and skills; and

(c) includes developmentally appropriate early mathematics assessment.

B. Schools must continue to provide a sequential comprehensive, developmentally appropriate early literacy program in the first [and], second and third grades following kindergarten. The program must include program elements, assessments, and professional development as addressed in the [regulation] rule.

[6.30.5.11 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.12 PROGRAM ELEMENT: ASSESSMENT

A. Teachers or instructional assistants under the guidance of teachers must administer [age-appropriate, literacy specific screening and assessment measures] developmentally appropriate assessments reflecting the whole child to participating students.

B. Teachers or instructional assistants under the guidance of teachers must administer [literacy-based] pretests by September 30 and posttests by April 30 of each school year to assess student performance.

C. Public schools districts having both half-day and full-day state-funded kindergarten programs will assess performance of all kindergarten students.

D. Public school districts must submit student test data to the [state department of education] public education department by May 30 of each school year.

[6.30.5.12 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.13 PROGRAM ELEMENT: PROFESSIONAL DEVELOPMENT

A. So that schools can plan and implement comprehensive and aligned reading programs, school districts must provide professional development to teachers, teacher assistants, and principals in the areas of:

(1) scientific-based [reading] early literacy research and its implications for instruction;

(2) best practices of English as a second language (ESL)/English language learner (ELL) instruction; [and]

(3) the principles of peer and

expert coaching;

(4) best practices in early mathematics instruction; and

(5) developmentally appropriate practice.

B. To ensure systematic implementation of full-day kindergarten literacy readiness programs that are research-based, teachers must be provided ongoing supervision and coaching.

[6.30.5.13 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.14 PROGRAM APPROVAL

A. ~~[School districts must submit an initial application to the SDE by April 15 of the preceding school year for each new school requesting funds for full-day kindergarten programs.]~~ School districts seeking initial approval of full-day kindergarten for a new school shall request public education department approval using the organization of grade levels and establishing/closing school waiver request form described in Subsection F of 6.29.1.9 NMAC.

~~[B. The initial application must include the following:~~

~~(1) number of students to be served;~~

~~(2) verification of available classroom space;~~

~~(3) identification of research-based curricula;~~

~~(4) identification of literacy specific assessment measures; and~~

~~(5) description of research-based, literacy specific, professional development.]~~

~~[C.] B. [The state department of education will review initial applications and will approve, or disapprove, applications and inform school districts by June 15.] The public education department will review all such requests for initial approval through the procedures set forth in Subsection F of 6.29.1.9 NMAC.~~

[6.30.5.14 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.15 END OF YEAR EVALUATION

A. Schools must provide verification to the state department of education that the kindergarten/literacy readiness program has:

(1) served the children identified as most in need; and

(2) implemented a literacy-based full-day kindergarten based on the program elements described above in Subsection A of 6.30.5.11.

~~[B. For continued funding, public schools must ensure that students successfully meet the New Mexico kindergarten language arts content standards, benchmarks, and performance standards.]~~

~~[C.] B. [The state department of education will] Upon development and implementation of a statewide full-day kindergarten test data system, the public education department shall compile student test data submitted by public school districts and make an annual report to the state board of education, legislative education study committee, and the legislature.~~

~~[D. If the state department of education determines a program is not meeting the benchmarks necessary to ensure student progress, it will notify the school district that failure to meet the benchmarks will result in the cessation of funding for the following year. Districts whose schools lose funding must reapply for funds. Districts whose schools with full-day kindergarten programs that meet the benchmarks necessary to ensure the progress of students in the program do not need to reapply for funding for those schools.]~~

[6.30.5.15 NMAC - N, 11-14-2000; A, 11-13-2009]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.41.2 NMAC, Sections 1, 2, 3, 7, 8 and 9, effective November 13, 2009.

6.41.2.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department

[12-31-98, 07-30-99; 6.41.2.1 NMAC - Rn, 6 NMAC 9.5.1.1, 07-31-01; A, 11-13-09]

6.41.2.2 SCOPE: Provisions of ~~[Chapter 41, Part 2]~~ this rule apply to public school districts and governs the standards for inspection and safety of school buses used to transport public school children under the jurisdiction of the ~~[state board of education]~~ department. This ~~[regulation]~~ rule establishes that school districts are responsible for the safe transportation of their students and if districts contract for transportation services, requires that school districts hold their contractor(s) accountable for safety of the contracted buses.

[12-31-98; 6.41.2.2 NMAC - Rn, 6 NMAC 9.5.1.2, 07-31-01; A, 11-13-09]

6.41.2.3 STATUTORY AUTHORITY: This ~~[regulation]~~ rule is adopted by the ~~[state board of education]~~ department pursuant to Section 22-16-2, NMSA, 1978 which stipulates the state transportation division of the department ~~[of education]~~ shall: establish standards and certify for safety, vehicles that are defined as school buses by the Motor Vehicle Code [Chapter 66, Articles 1 to 8, except 66-7-102.1 NMSA, 1978].

[12-31-98; 6.41.2.3 NMAC - Rn, 6 NMAC

9.5.1.3, 07-31-01; A, 11-13-09]

6.41.2.7 DEFINITIONS: [Reserved]

A. "Department" means the public education department.

B. "State transportation division" means the program support and student transportation division.

[12-31-98; 6.41.2.7 NMAC - Rn, 6 NMAC 9.5.1.7, 07-31-01; A, 11-13-09]

6.41.2.8 REQUIREMENTS OF THE [STATE DEPARTMENT OF EDUCATION] PUBLIC EDUCATION DEPARTMENT: The ~~[state department of education]~~ department, working cooperatively with other agencies and entities, will establish a safety audit program. The ~~[state department of education]~~ department, or its authorized representatives, will be required to:

A. randomly audit district school bus maintenance and inspections records;

B. conduct random school bus inspections as a division, ~~[and/or]~~ or through joint power agreements with other agencies, ~~[and/or]~~ or contract with other entities;

C. conduct random school bus inspections in compliance with the ~~[state department of education]~~ department's guide for school bus maintenance and safety audit program;

D. maintain records of the school districts inspection and safety audits. [12-31-98; 6.41.2.8 NMAC - Rn, 6 NMAC 9.5.1.8 & A, 07-31-01; A, 11-13-09]

6.41.2.9 REQUIREMENTS OF SCHOOL DISTRICTS: School districts shall ensure that all school buses are inspected semi-annually in accordance with the guide for school bus maintenance and safety audit program.

A. School districts must maintain the following:

(1) maintenance records in accordance with the ~~[state department of education's]~~ department's guide for school bus maintenance and safety audit program;

(2) semi-annual inspection records completed by the contractor or in the case of owned operations, the local school district superintendent;

(3) pre-and-post trip records of daily inspections for the school year completed by the contractor or school district transportation director;

(4) inspection records of random inspections conducted by inspectors or auditor authorized by the ~~[state department of education]~~ department.

B. School districts must certify to the ~~[state department of education]~~ department that semi-annual inspections and

daily driver inspections have been conducted and are on file.

[12-31-98; 6.41.2.9 NMAC - Rn, 6 NMAC 9.5.1.9 & A, 07-31-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.41.3 NMAC, Sections 1, 2, 3, 7, 13 and 14, effective November 13, 2009.

6.41.3.1 ISSUING AGENCY:

[State Board of Education] Public Education Department

[12-31-98, 07-30-99; 6.41.3.1 NMAC - Rn, 6 NMAC 9.5.2.1, 05-31-01; A, 11-13-09]

6.41.3.2 SCOPE: Provisions of [Chapter 41, Part 3] this rule apply to public school districts to provide general standards pursuant to statute to allow for exceptions to subsection B of Section 22-16-4 NMSA 1978, which establishes the distance from the attendance center that a school bus route may be approved or maintained.

[12-31-98, 6.41.3.2 NMAC - Rn, 6 NMAC 9.5.2.2, 05-31-01; A, 11-13-09]

6.41.3.3 STATUTORY AUTHORITY: This [regulation] rule is adopted by the [state board of education] department pursuant to Section 22-16-2, NMSA 1978 which stipulates that the state transportation division shall enforce those [regulation] rules adopted by the [state board] department relating to school bus transportation and subsection B of Section 22-16-4, NMSA 1978 which stipulates that no school bus route shall be maintained for lesser distance than: (1) one mile one way for students in grades kindergarten through six; (2) one and one-half miles one way for students in grades seven through nine; and (3) two miles one way for students in grades ten through twelve.

[12-31-98; 6.41.3.3 NMAC - Rn, 6 NMAC 9.5.2.3, 05-31-01; A, 11-13-09]

6.41.3.7 DEFINITIONS:

A. Regulated - A crossing site where, for the street or roadway being crossed, a crossing guard, traffic enforcement officer, stop sign, or traffic control signal is present or the crossing site is designated and marked as a reduced speed school crossing zone.

B. Unregulated - A crossing site where, for the street or roadway being crossed, no crossing guard, traffic enforcement officer, stop sign, or traffic control signal is present, or the crossing site is not designated or marked as a reduced speed school crossing zone.

C. High speed - 40 miles per hour (MPH) or higher posted speed limit.

D. Department - The public

education department.

E. State transportation division - The program support and student transportation division.

[12-31-98; 6.41.3.7 NMAC - Rn, 6 NMAC 9.5.2.7 & A, 05-31-01; A, 11-13-09]

6.41.3.13 APPEAL: If a local board of education does not agree with the final determination of the state transportation director, the board may appeal to the [state board of education] department.

[12-31-98; 6.41.3.13 NMAC - Rn, 6 NMAC 9.5.2.13, 05-31-01; A, 11-13-09]

6.41.3.14 FLEXIBLE APPLICATION OF THIS [REGULATION] RULE:

In accordance with subsection C of Section [22-16-5] 22-16-4 NMSA 1978, supra, the local school board and the state transportation director to prevent accidents and help ensure student safety shall flexibly and not rigidly apply the standards for hazardous walking conditions. Local boards of education therefore, may choose to adopt hazardous walking standards that exceed those outlined under Section 6.41.3.10 NMAC. The requirements for the application of the hazardous walking standards that exceed Section 6.41.3.9 NMAC are:

A. the local board of education shall adopt a written policy which includes the standards for hazardous walking within the local district that exceed those outlined in Section 6.41.3.9 NMAC; and

B. any additional costs incurred due to the local school district's policy which exceed the standards established in Section 6.41.3.9 NMAC shall be the responsibility of the local district unless a legislative appropriation has been approved for this purpose.

[12-31-98; 6.41.3.14 NMAC - Rn, 6 NMAC 9.5.2.14, 05-31-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.42.2 NMAC, Sections 1, 2, 3, 8, 9 and 12, effective November 13, 2009.

6.42.2.1 ISSUING AGENCY:

[State Board of Education] Public Education Department

[12-31-98, 07-30-99; 6.42.2.1 NMAC - Rn, 6 NMAC 9.3.1.1, 05-31-01; A, 11-13-09]

6.42.2.2 SCOPE: Provisions of [Chapter 42, Part 2] this rule apply to public school districts where temporary transportation boundaries are established to transport students from an adjoining districts within a specified geographic area where it is impractical to transport such students to school within the district where they live.

[12-31-98; 6.42.2.2 NMAC - Rn, 6 NMAC

9.3.1.2, 05-31-01; A, 11-13-09]

6.42.2.3 STATUTORY

AUTHORITY: This [regulation] rule is adopted by the [state board of education] public education department pursuant to Section 22-2-1, 22-2-2, 22-16-2 and Section 22-8-26, NMSA, 1978, which stipulates that money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district for the to-and-from transportation of eligible students. Eligible students are those who live within the legal boundaries of the school district, who meet the statutory requirements for eligibility, and who utilize the transportation services on a regular basis. Only eligible students shall be counted for purposes of funding.

[12-31-98; 6.42.2.3 NMAC - Rn, 6 NMAC 9.3.1.3, 05-31-01; A, 11-13-09]

6.42.2.8 TRANSPORTATION BOUNDARY AGREEMENTS

A. Districts are authorized to enter into transportation boundary agreements with an adjoining district or adjoining districts regarding students living within a specified geographic area where geographical conditions would otherwise make it impractical to transport such students to school within the district where they live.

B. A transportation boundary agreement must be approved by both local boards of education prior to a district crossing boundary lines to transport students.

C. A transportation boundary agreement shall not duplicate transportation services that are not required to effectuate the provision of this [regulation] rule. If duplicate transportation services are so required, specific justification shall be provided within the agreement that the requirements of efficiency and economy are met.

D. Transportation boundary agreements are not authorized to provide services to students who attend school out-of-district as a matter of choice.

[12-31-98; 6.42.2.8 NMAC - Rn, 6 NMAC 9.3.1.8, 05-31-01; A, 11-13-09]

6.42.2.9 PROCEDURES AND CRITERIA FOR TEMPORARY TRANSPORTATION BOUNDARY AGREEMENTS

A. A transportation boundary agreement must be approved by the local board of education representing the district in which the student(s) lives and the proposed attendance district.

B. The agreement shall include a legal description of the adjoining area outside the district's boundaries that transportation services will be provided under the terms of the agreement.

C. The temporary transportation boundary line(s) and the existing school district boundary line(s) must be shown and highlighted on U.S. geological survey maps (or their equivalent) which are attached to the agreement.

D. Both local boards of education must agree to the conditions, which are specified in the agreement.

E. The duration of the agreement is determined by both local boards of education based on the length of time that it is needed.

F. Both local school board presidents must sign the initial agreement and submit the original agreement to the state transportation director for approval.

G. Upon review and findings that the conditions of this [regulation] rule and other applicable regulations and state and federal laws have been complied with, the state transportation director and the [state superintendent of public instruction] secretary of public education will approve the agreement.

H. The local boards of education must review the agreement annually. Any revisions in the terms of the agreement require approval by both local boards. The revised agreement must be submitted to the [state department of education] public education department for approval prior to the initiation of service. If no changes occur, the existing agreement may be continued.

I. The extended area of transportation service added to a district boundary through the agreement shall be counted in the square miles per student for purposes of funding.

J. Students who receive transportation services within the area approved through the agreement shall be counted for transportation funding by the district in which they attend school.

K. One or both districts can accomplish termination of the agreement. The [state department of education] public education department must be notified by both school districts when the agreement is terminated.

[12-31-98; 6.42.2.9 NMAC - Rn, 6 NMAC 9.3.1.9, 05-31-01; A, 11-13-09]

6.42.2.12 RESOLUTION PROCESS

A. When boundary disputes arise between local boards, which cannot be resolved, a resolution process is available through the [state department of education] public education department.

B. Local boards may request that [state department of education] public education department conduct a study of the issues relating to the boundary dispute and provide written recommendations for resolving the disputes.

C. A local board may file a written complaint with the [state department of education] public education department after all efforts to negotiate a resolution to the boundary dispute have failed.

D. The [state department of education] public education department, following a complete review of the issues related to a transportation boundary complaint, shall render an opinion in writing to the local boards of education. The opinion shall specify whether conditions exist which require a transportation boundary agreement based on the criteria set forth in this [regulation] rule.

E. If local boards of education are unwilling or unable to negotiate a transportation boundary agreement consistent with the opinion of the [state department of education, the state department of education] public education department, the public education department shall develop a temporary transportation boundary amendment. The local boards of education shall comply with the requirements set forth in the temporary transportation boundary amendment. The temporary transportation boundary amendment shall be reviewed annually by the [state department of education] public education department. The temporary transportation boundary amendment shall be rescinded when the [state department of education] public education department determines that the conditions requiring the amendment no longer exist.

F. The decision of [state department of education] public education department shall be final.

[12-31-98; 6.42.2.12 NMAC - Rn, 6 NMAC 9.3.1.12, 05-31-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.43.2 NMAC, Sections 1, 8, 9, 10, 11, 12, 13 and 14, effective November 13, 2009. The part name is also amended to correct a spelling error.

PART 2 REQUIREMENTS FOR SCHOOL BUS ~~CONTRACTS~~ CONTRACTS AND PER CAPITA FEEDER AGREEMENTS

6.43.2.1 ISSUING AGENCY: [State Board of Education] Public Education Department

[12-31-98, 07-30-99; 6.43.2.1 NMAC - Rn, 6 NMAC 9.4.1.1, 10-15-01; A, 11-13-09]

6.43.2.8 SCHOOL BUS SERVICE CONTRACTS

A. A local board may provide transportation services to students

through the use of school bus service contracts.

B. Local boards may enter into school bus service contracts with individual school bus owner-operators or with fleet owners or with both. A local board may not enter into any school bus fleet service contract with any person who is simultaneously employed by that local board as an individual one-bus owner/operator.

C. All individual owner operator equipment contracts and fleet service contracts shall be in writing on forms approved by the [state board of education] public education department.

D. For fleet contractors, the amount of the contract shall include recognition of fuel costs, operation and maintenance costs, and salary and benefits costs. For individual owner operator equipment contracts, the amount of the contract shall include recognition of fuel and operations and maintenance costs.

E. Local boards may request assistance from the [state department of education] public education department regarding contracts; however, the [state department of education] public education department shall not be a party to the contract and shall not participate in the negotiations.

F. The local board shall give preference to in-state providers and the use of multiple providers when awarding contracts.

G. The local board may agree to a five-year contract period. Any changes in the terms of the contract require that the contract be renegotiated/amended. At the end of the contract period the contract may be renewed annually on the same terms and conditions at the option of the local board.

H. The local board may terminate a school bus service contract in accordance with the provisions of state law and the school bus contract.

I. The contractor, may with the approval of the local school board, terminate a contract in accordance with state law and the school bus contract.

J. The contractor shall comply with the terms and conditions set forth in the [state board of education] public education department contract form. The contractor shall be subject to all federal and state laws and regulations, which govern school transportation.

K. The local board shall comply with the procedures established by the [state superintendent of public instruction] secretary of public education for the purchase and replacement of school buses.

L. The local board shall comply with all state laws and regulations governing school transportation. The local board shall negotiate contracts for the

required services at a fair and reasonable price.

M. The school district shall ensure that a lien is filed in its name on every contractor-owned school bus under the contract. The school district shall also ensure that a lien is perfected in its name on each contractor-owned school bus with the motor vehicle division of the taxation and revenue department. The lien shall be recorded on the title of the school bus. The school district shall provide documentation to the state transportation director that the school district has filed a lien on each school bus authorized under contract with the school district. A school bus contractor shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the public education department. The school district shall release its lien on a school bus when:

(1) the public education department authorizes a replacement of the school bus; or

(2) the contractor has reimbursed the school district the amount calculated by the public education department; if the school district fails to take action to collect money owed to it when a school bus contract is terminated or not renewed, the public education department may deduct the amount from the school district's transportation distribution.

[12-31-98; 6.43.2.8 NMAC - Rn, 6 NMAC 9.4.1.8, 10-15-01; A, 11-13-09]

6.43.2.9 INDIVIDUAL OWNER OPERATOR

A. An individual who owns only one bus and drives the bus on a full time basis is, as a driver, considered an employee of the district. The local board shall enter into an employment contract with the driver. The driver's salary shall be calculated on the local board's established salary schedule for bus drivers. Benefits shall be calculated on the salary amount according to the established benefit rates.

B. The local board shall negotiate an individual owner/operator equipment contract for the use of the bus to provide transportation services consistent with provisions of state law and ~~[state board of education regulations]~~ public education department rules.

C. The local board shall ensure that the owner/operator meets training and drug testing requirements in compliance with federal and state laws and ~~[state board of education regulations]~~ public education department rules.

D. The individual owner/operator shall have no ownership interest of any type or degree in any fleet service contract with the local board, including without limitation, an interest in the nature of

legal or rightful title, possessory interest, or a beneficial, equitable, or pecuniary interest. [12-31-98; 6.43.2.9 NMAC - Rn, 6 NMAC 9.4.1.9, 10-15-01; A, 11-13-09]

6.43.2.10 FLEET SERVICE CONTRACT

A. The local board may contract with a person who owns one or more buses and who hires drivers to drive the bus. Such a person is considered self-employed and shall be contracted as a fleet operator.

B. The local board shall negotiate fleet service contracts consistent with the provisions of state law and ~~[state board of education regulations]~~ public education department rules.

[12-31-98; 6.43.2.10 NMAC - Rn, 6 NMAC 9.4.1.10, 10-15-01; A, 11-13-09]

6.43.2.11 PROCEDURES FOR AWARDING NEW CONTRACTS

A. A new contract shall be awarded because of:

(1) the retirement, resignation, or death of a current contractor;

(2) the determination by the local board to change from a school owned operation to a contract operation;

(3) the addition of a bus or buses to provide transportation services; unless, the local board elects to amend an existing contract in accordance with the provision of Section 22-16-3, NMSA, 1978;

(4) unsatisfactory services by the contractor;

(5) termination of an existing contract.

B. The local board shall publish notice of a request for proposal (RFP) for procurement of transportation services not less than ten calendar days prior to the date set for the receipt of the proposals. The RFP shall be published at least once in a newspaper of general circulation in the area in which the local board is located. If there is no newspaper of general circulation in the area, such other notice may be given as is reasonable.

C. A copy of the RFP and notice shall be available for public inspection at the district administration office.

D. The local board shall develop proposal criteria by which all offers shall be evaluated. The proposal criteria shall include:

(1) a current financial statement;

(2) if a corporation, the names, addresses, dates of birth, and social security numbers of all stockholders and officers;

(3) a minimum of three business or professional references;

(4) a proposal for the acquisition of buses and other equipment; the proposal shall indicate the year of manufacture and size of buses to serve each route and

necessary spare equipment to provide uninterrupted service;

(5) a description of the proposed fleet maintenance program, garage or maintenance facilities, bus parking, mechanics, parts, and supplies; in the case of a one bus or small fleet operation, a description shall be submitted relative to garage services planned by the owner with an established automotive repair facility;

(6) the proposal shall indicate the method, in conformance with state and federal laws and regulations, by which drivers will be selected, trained and supervised;

(7) an amount for which the services will be rendered based on the length of the route(s), road conditions, number of buses and drivers, fuel, operation and maintenance requirements, and, for fleet contractor salaries and benefits;

(8) any other information that the local board may require.

E. The local board shall provide each proposed offerer with the following information:

(1) the proposal criteria;

(2) route information which includes the approximate distance, types of roadways, number of students to be transported, and the size of the buses required;

(3) a copy of the contract form approved by the ~~[state board of education]~~ public education department;

(4) a copy of, or access to, all ~~[state board of education regulations]~~ public education department rules, and local board compliance manuals and policies, which govern the operation of school transportation services;

(5) a description of the insurance coverage that will be provided by the local board for buses to be operated under contract.

F. The local board shall consider all proposals submitted by the deadline recorded in the notice. The local board shall award the contract to the offerer whose proposal provides the most efficient, economical, and safe transportation services to meet the needs of the district. The negotiated amount shall not exceed available resources.

G. The local board may reserve the right to reject all proposals.

H. The local board shall provide notice of the award to the state transportation director on forms provided by the ~~[state department of education]~~ public education department. All proposals, including the established criteria for awarding the contract, copies of advertisements, copies of all proposals and the proposal evaluations shall be subject to audit by the ~~[state department of education]~~ public education department, the state auditor, ~~[and/or]~~ or an independent auditor.

Records shall be retained for a minimum of five years.

I. The local board shall conduct a background check on proposed contractors prior to approval of the contract.
[12-31-98; 6.43.2.11 NMAC - Rn, 6 NMAC 9.4.1.11, 10-15-01; A, 11-13-09]

6.43.2.12 PROCEDURES FOR RENEWING EXISTING CONTRACTS: Prior to the contract renewal, the district shall request the following information from a current contractor:

A. A current financial statement.
B. If a corporation, the names, addresses, dates of birth, and social security numbers of all stockholders or partnerships.
C. The local board shall evaluate the services that have been rendered by the contractor on the basis of the terms of the contract. The local board shall determine whether the terms of the contract have been met and whether the contract shall be considered for renewal.

D. The contractor shall be apprised of the results of the evaluation and the determination of the board regarding renewal of the contract. If the contract is recommended for renewal, the terms of the contract shall ensure that any deficiencies identified in the evaluation are corrected.

E. The board shall provide the contractor with any proposed or anticipated changes in the school transportation program relative to boundary changes, route changes attendance center designations, or any other proposed or anticipated changes.

F. The local board shall not negotiate a contract award for transportation services, which exceeds available resources.

G. The local board shall provide notice of the contract renewal to the state transportation director on forms provided by the [state department of education] public education department.

[12-31-98; 6.43.2.12 NMAC - Rn, 6 NMAC 9.4.1.12, 10-15-01; A, 11-13-09]

6.43.2.13 FLEET SERVICE CONTRACT (FORM): THIS AGREEMENT is made and entered into as this _____ day of _____, 20____, by and between _____ (local board of education) hereinafter called "BOARD" and _____ (contractor) herein after referred to as "CONTRACTOR." WITNESETH: WHEREAS, BOARD has engaged CONTRACTOR to provide the pupil transportation services described herein; and WHEREAS, CONTRACTOR desires to provide such transportation services; NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree as follows:

A. TERM: The term of this agreement shall commence _____, 20____ and shall continue through _____, 20____. This contract may be renewed annually thereafter on the same terms and conditions at the option of the BOARD.

B. SCOPE OF SERVICES

(1) CONTRACTOR shall, during the term of the agreement supply the buses listed on Appendix A incorporated herein by reference and shall maintain such number of school buses specified to provide transportation services to the BOARD consistent with the terms of this contract.

(2) CONTRACTOR shall, provide for the efficient management of the transportation services as set forth herein. CONTRACTOR shall advise the BOARD of the name(s), address(s), and phone number(s) of individual(s) designated as responsible for the management of services.

(3) CONTRACTOR shall provide for the to-and-from transportation of students in grades kindergarten through twelve who attend school within the school district, of three and four year old children who meet the [state board of education] public education department approved criteria and definition of developmentally disabled, and for the transportation of students to and from their regular attendance centers and vocational programs approved by the [state department of education] public education department.

(4) Transportation services shall be provided for _____ school days in accordance with bus routes and schedules agreed to under the terms of this contract. For each day that a bus is not operated, the compensation paid the CONTRACTOR shall be decreased by 1/____th of the total compensation for services provided in Subsection C, Paragraph (1) of this contract.

(5) CONTRACTOR shall comply with all federal and state laws, regulations, policies and directives of the BOARD.

C. COMPENSATION

(1) The BOARD shall pay CONTRACTOR all sums due and calculated in accordance with the conditions of this contract. The BOARD agrees to pay the CONTRACTOR \$_____ for purchase allowance/rental fees, and \$_____ for services herein for a total of \$_____ to be paid in consecutive monthly installments as follows: _____ equal installments of \$_____ each, and a final installment of \$_____, commencing on the _____ day of _____, 20_____.

(2) The compensation payable pursuant to this contract is subject to adjustment by the BOARD for route changes, the addition of to-and-from buses approved by the [state department of education] public education department, or changes in the provision of services. Contract amendments required; as a result of such adjustments shall be approved by the BOARD.

(3) This contract may be further adjusted or payments withheld where audits or investigations by the BOARD or [state department of education] public education department verify overpayments, underpayment, or expenditures in violation of state laws or [regulations] rules or the terms of this contract.

(4) The terms of this contract are contingent upon sufficient legislative appropriations for to-and-from transportation and authorization of the appropriation.

D. FUEL: CONTRACTOR shall furnish all fuel to be used in its performance of this agreement.

E. OPERATION AND MAINTENANCE

(1) CONTRACTOR shall furnish buses of a type and with the equipment required by federal and state law and regulations, including applicable [state board of education regulations] public education department rules.

(2) CONTRACTOR shall provide for all operation and maintenance of buses utilized for service under the terms of this agreement.

(3) CONTRACTOR shall ensure that buses operating under this contract meet established [state board of education] public education department safety inspection requirements.

F. SALARIES: CONTRACTOR shall provide for salaries and benefits of all employees providing service under the terms of this agreement.

G. ROUTES AND SCHEDULES

(1) CONTRACTOR shall operate the buses according to the routes approved by the BOARD. The BOARD on the basis of safety, efficiency and economy shall approve such routes.

(2) On the 40th day of the school year, CONTRACTOR shall furnish BOARD a complete route map and roster of eligible students who are transported. Additional reports shall be submitted as follows: _____

(3) The BOARD reserves the right to modify the routes consistent with the terms of this contract, should circumstances require such modifications. The superintendent or designee may modify stops and time schedules as required. The CONTRACTOR shall be notified in writing by the BOARD's superintendent or designee when changes are necessary, and CONTRACTOR shall adjust its operations to incorporate such changes.

H. RECORDS AND REPORTS

(1) All records required by state law or [~~regulations~~] rules shall be subject to inspections and audits by the [~~state department of education~~] public education department, the office of the state auditor, and any auditor designated to conduct such inspections or audits. The [~~state department of education~~] public education department and the state auditor shall have the right to audit both before and after payment, and payment under this contract shall not foreclose the right of the BOARD to recover excessive or illegal payments.

(2) The CONTRACTOR shall complete appendix B, incorporated herein by reference, and shall submit annually a final expenditure report for fuel, operation and maintenance, and salary and benefits on forms provided by the [~~state department of education~~] public education department.

(3) The CONTRACTOR shall make such reports as may be required by the BOARD or the [~~state department of education~~] public education department. Failure to make required reports on time and with accuracy shall be considered a breach of contract and shall be cause to adjust payments or withhold payments until reporting requirements are met.

(4) The CONTRACTOR shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the public education department.

I. INDEMNIFICATION: CONTRACTOR shall hold BOARD, its officers and employees harmless and does hereby indemnify the BOARD, its officers and employees from and against every claim or demand which may be made by any person, firm or corporation, or other entity arising from or caused by any act, neglect, default or omission of CONTRACTOR in the performance of this agreement, except to the extent that such claim or demand arises from or is caused by the negligence or willful misconduct of BOARD, its agents or employees.

J. INSURANCE

(1) The BOARD shall provide automobile liability coverage to the CONTRACTOR, which includes bodily injury, property damage, and physical damage for all buses under contract to the BOARD. The terms, conditions and limits of coverage shall be in accordance with that provided by the New Mexico public schools insurance authority or any other coverage provided by the local BOARD and allowed by statute.

(2) The CONTRACTOR shall carry worker's compensation insurance as statutorily required by the state of New Mexico and shall provide evidence of insurance to the BOARD.

K. INCLEMENT WEATHER AND SCHOOL CLOSINGS: In the event of inclement weather or impassability of roads or whenever school is canceled, delayed or is dismissed early, BOARD shall notify CONTRACTOR not later than _____ hours before service.

L. SAFETY: CONTRACTOR shall be responsible for meeting all safety requirements established by local, state, or federal laws or regulations. A record of training and other safety reporting requirements shall be provided to the BOARD upon request.

M. OPERATION/PERSONNEL/DRIVER QUALIFICATIONS

(1) CONTRACTOR shall employ a sufficient number of drivers and support personnel to carry out the terms of this contract.

(2) CONTRACTOR shall ensure that employees meet training requirements set forth by federal and state law, [~~state board of education regulations~~] public education department rules and BOARD policies and shall assume the cost of training for drivers and bus assistants.

(3) CONTRACTOR shall establish rules, which prohibit the driver from smoking on the bus or driving under the influence of drugs or alcohol while operating any bus.

(4) CONTRACTOR shall comply with federal laws and regulations for drug and alcohol testing and shall provide to the BOARD verification of compliance.

(5) CONTRACTOR shall be responsible for hiring and discharging personnel employed by CONTRACTOR to perform its obligations hereunder; provided, however, that the BOARD shall have the right to require CONTRACTOR to remove from service under this agreement any employee whose performance is, in good faith, deemed by the BOARD unsuitable to the provision of transportation services for BOARD; and provided further that BOARD shall provide the CONTRACTOR such notification in writing and provide justification for its determination.

(6) CONTRACTOR shall provide qualified drivers, trained and licensed in accordance with the laws of this state and the rules and regulations of BOARD.

N. TERMINATION OF CONTRACT BY BOARD: Subject to procedures hereinafter set forth, the BOARD may terminate this contract before its expiration date for violation of law, terms of the contract, or [~~regulations~~] rules and policies of the [~~state board of education~~] public education department or BOARD. The procedures for termination of this contract are as follows:

(1) The BOARD shall serve notice upon the CONTRACTOR in person, or by registered or certified mail, specifying the charges against the CONTRACTOR under which the contract is sought to be terminated, with a copy of such notice provided to the state transportation director.

(2) The notice shall also specify a time and place at which the BOARD will hold a hearing on the charges made against the CONTRACTOR which hearing shall not be more than ten (10) calendar days after service of the notice upon the CONTRACTOR.

(3) The CONTRACTOR shall have the right to appear and be represented by legal counsel, to be heard, and to call witnesses in his/her own behalf.

(4) The BOARD shall have the power to suspend the CONTRACTOR pending a hearing on the charges.

(5) The decision of the BOARD shall be final and conclusive, subject only to the approval of the state transportation director.

(6) In the event that this contract is terminated or not renewed, the [state superintendent of public instruction] secretary of public education shall calculate the remaining number of years that the bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The DISTRICT shall deduct an amount equal to that value from any remaining amount due on the contract. If no balance remains on the contract, the CONTRACTOR shall reimburse the DISTRICT an amount equal to the value calculated.

(7) In the event that this contract is terminated, the buses owned by the CONTRACTOR and used pursuant to the terms of this contract as set forth in appendix A herein shall be appraised by three qualified appraisers appointed by the BOARD and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the CONTRACTOR, all said buses at their appraised value.

O. **TERMINATION OF CONTRACT BY CONTRACTOR:** Subject to procedures hereinafter set forth, the CONTRACTOR may cancel this contract before its expiration by the following procedures:

(1) The CONTRACTOR shall serve a written notice upon the BOARD in person or by registered or certified mail, with a copy of such notice provided to the state transportation director, specifying the reason for cancellation.

(2) The notice shall also specify the date at which such cancellation shall be effective, but not less than sixty (60) calendar days after the service of notice.

(3) Cancellation of the contract shall be effective only after the BOARD grants written consent and notice provided to the state transportation director.

(4) This contract shall not be assigned to another individual or corporation.

(5) In the event that this contract is terminated or not renewed, the [state superintendent of public instruction] secretary of public education shall calculate the remaining number of years that the bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The DISTRICT shall deduct an amount equal to that value from any remaining amount due on the contract. If no balance remains on the contract, the CONTRACTOR shall reimburse the DISTRICT an amount equal to the value calculated.

(6) In the event that this contract is terminated or not renewed, the buses owned by the CONTRACTOR and used pursuant to the terms of this contract as set forth in appendix A herein shall be appraised by three qualified appraisers appointed by the BOARD and approved by the state transportation director. The operator succeeding to the contract shall purchase with the approval of the CONTRACTOR all said buses at their appraised value.

IN WITNESS WHEREOF we have set our hands and seals. _____ BOARD OF EDUCATION BY
: _____ PRESIDENT ATTEST: _____ SECRETARY _____

_____ CONTRACTOR

P. Appendix A (Part I)

FLEET CONTRACT

Bus #	O w n e r Code	Year	Model	Seating	Lift	Vehicle Identification	License Plate	Rental Fee

Q. Appendix A (Part II)

FLEET CONTRACT

Bus#	Route Mileage	Route Description (area served)

R. APPENDIX B: FLEET CONTRACT PAYMENT SCHEDULE, 20__ 20__ SCHOOL YEAR This contract approved by the _____ (BOARD) on ___/___/___ for _____

____(CONTRACTOR) to operate _____buses/routes set forth in appendix A to provide school transportation services includes the following amounts deemed necessary for CONTRACTOR to carry out the terms of the contract safely, efficiently, and economically:

- (1) BUS PURCHASE/RENTAL FEE: \$ _____
- (2) TRANSPORTATION SERVICES: (estimated budget)
 - (a) fuel \$ _____
 - (b) operation & maintenance and all other expenses \$ _____
 - (c) salary and benefits _____
- (3) total transportation services \$ _____
- (4) total estimated budget \$ _____

[12-31-98; 6.43.2.13 NMAC - Rn, 6 NMAC 9.4.1.13 & A, 10-15-01; A, 11-13-09]

6.43.2.14 INDIVIDUAL OWNER OPERATOR EQUIPMENT CONTRACT (Form): THIS AGREEMENT is made and entered into as this _____day of _____, 20_____, by and between _____ (local board of education) hereinafter called "BOARD" and _____(owner/operator) herein after referred to as "OWNER/OPERATOR." WHEREAS, OWNER/OPERATOR desires to provide such transportation equipment, fuel, and operation and maintenance associated with the use of the equipment under the terms of this contract; NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree as follows:

A. TERM: The term of this agreement shall commence _____, 20_____ and shall continue through _____, 20_____; This contract may be renewed annually thereafter on the same terms and conditions at the option of the BOARD.

B. SCOPE OF SERVICES

(1) OWNER/OPERATOR shall, during the term of the agreement supply and maintain the bus listed on Appendix A herein to provide transportation equipment to the BOARD consistent with the terms of this contract.

(2) OWNER/OPERATOR shall, provide for the efficient maintenance and operation of the equipment as set forth herein.

(3) OWNER/OPERATOR shall provide for the to-and-from transportation of students in grades kindergarten through twelve who attend school within the school district, of three and four year old children who meet the [~~state board of education~~] public education department approved criteria and definition of developmentally disabled, and for the transportation of students to and from their regular attendance centers and vocational programs approved by the [~~state department of education~~] public education department.

(4) Transportation services shall be provided for _____school days in accordance with bus routes and schedules agreed to under the terms of this contract. For each day that a bus is not operated, the compensation paid the OWNER/OPERATOR shall be decreased by 1/____th of the total compensation for services provided in Subsection C, Paragraph (1) of this contract.

(5) OWNER/OPERATOR shall comply with all federal and state laws, [~~regulations~~] rules, policies and directives of the BOARD.

C. COMPENSATION

(1) The BOARD shall pay to OWNER/OPERATOR all sums due and calculated in accordance with the conditions of this contract. The BOARD agrees to pay the OWNER/OPERATOR \$ _____for purchase allowance/rental fees, and \$ _____for fuel, operation and maintenance for a total of \$ _____to be paid in consecutive monthly installments as follows: _____equal installments of \$ _____each, and a final installment of \$ _____, commencing on the _____day of _____, 20_____.

(2) The operation and maintenance reimbursement payable pursuant to this contract is subject to adjustment by the BOARD for route changes, bus replacement approved by the [~~state department of education~~] public education department, or changes in the provision of services. Contract amendments required; as a result of such adjustments shall be approved by the BOARD.

(3) This contract may be further adjusted or payments withheld where audits or investigations by the district, hereinafter referred to as "DISTRICT" or [~~state department of education~~] public education department verify overpayments, underpayment, or expenditures in violation of state laws or [~~regulations~~] rules or the terms of this contract.

(4) The terms of this contract are contingent upon sufficient legislative appropriations for to-and-from transportation and authorization of the appropriation.

D. FUEL: OWNER/OPERATOR shall furnish all fuel to be used in its performance of this agreement.

E. OPERATION AND MAINTENANCE

(1) The bus furnished and maintained by the OWNER/OPERATOR shall be of a type and with the equipment required by federal and state law and regulations, including applicable [~~state board of education regulations~~] public education department rules.

(2) OWNER/OPERATOR shall provide for all operation and maintenance of buses utilized for service under the terms of this agreement.

(3) OWNER/OPERATOR shall ensure that buses operating under this contract meet established [~~state board of education~~] public education department safety inspection requirements.

F. ROUTES AND SCHEDULES

(1) OWNER/OPERATOR shall operate the bus according to the routes approved by the BOARD. The BOARD based on safety; efficiency and economy shall approve such routes.

(2) On the 40th day of the school year, OWNER/OPERATOR shall furnish BOARD a complete route map and roster of eligible students who are transported. Additional reports shall be submitted as follows: _____

(3) The BOARD reserves the right to modify the routes consistent with the terms of this contract, should circumstances require such modifications. The superintendent or designee may modify stops and time schedules as required. The OWNER/OPERATOR shall be notified in writing by the BOARD's superintendent or designee when changes are necessary, and OWNER/OPERATOR shall adjust its operations to incorporate such changes.

G. RECORDS AND REPORTS

(1) All records required by state law or [~~regulations~~] rules shall be subject to inspections and audits by the [~~state department of education~~] public education department, the office of the state auditor, and any auditor designated to conduct such inspections or audits. The

[state department of education] public education department and the state auditor shall have the right to audit both before and after payment, and payment under this contract shall not foreclose the right of the BOARD to recover excessive or illegal payments.

(2) The OWNER/OPERATOR shall complete appendix B, incorporated herein by reference, and shall submit annually a final expenditure report for fuel, operation and maintenance costs on forms provided by the [state department of education] public education department.

(3) The OWNER/OPERATOR shall make such reports as may be required by the BOARD or the [state department of education] public education department. Failure to make required reports on time and with accuracy shall be considered a breach of contract and shall be cause to adjust payments or withhold payments until reporting requirements are met.

(4) The CONTRACTOR shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the public education department.

H. INSURANCE: The BOARD shall provide automobile liability coverage to the OWNER/OPERATOR, which includes bodily injury, property damage, and physical damage for the bus under contract to the BOARD. The terms, conditions and limits of coverage shall be in accordance with that provided by the New Mexico public schools insurance authority or any other coverage provided by the BOARD and allowed by statute.

I. INCLEMENT WEATHER AND SCHOOL CLOSINGS: In the event of inclement weather or impassability of roads or whenever school is canceled, delayed or is dismissed early, BOARD shall notify OWNER/OPERATOR not later than _____ hours before service.

J. SAFETY: OWNER/OPERATOR shall be responsible for meeting all safety requirements established by local, state, or federal laws or regulations. A record of training and other safety reporting requirements shall be provided to the BOARD upon request.

K. TERMINATION OF CONTRACT BY BOARD: Subject to procedures hereinafter set forth, the BOARD may terminate this contract before its expiration date for violation of law, terms of the contract, or [regulations] rules and policies of the [state board of education] public education department or BOARD. The procedures for termination of this contract are as follows:

(1) The BOARD shall serve notice upon the OWNER/OPERATOR in person, or by registered or certified mail, specifying the charges under which the contract is sought to be terminated, with a copy of such notice provided to the state transportation director.

(2) The notice shall also specify a time and place at which the BOARD will hold a hearing on the charges made against the OWNER/OPERATOR which hearing shall not be more than ten (10) calendar days after service of the notice.

(3) The OWNER/OPERATOR shall have the right to appear and be represented by legal counsel, to be heard, and to call witnesses in his/her own behalf.

(4) The BOARD shall have the power to suspend the OWNER/OPERATOR pending a hearing on the charges.

(5) The decision of the BOARD shall be final and conclusive, subject only to the approval of the state transportation director.

(6) In the event that this contract is terminated, the [state superintendent of public instruction] secretary of public education shall calculate the remaining number of years that the bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The DISTRICT shall deduct an amount equal to that value from any remaining amount due on the contract. If no balance remains on the contract, the OWNER/OPERATOR shall reimburse the DISTRICT an amount equal to the value calculated.

(7) In the event that this contract is terminated or not renewed, the buses owned by the OWNER/OPERATOR and used pursuant to this contract as set forth in appendix A herein shall be appraised by three qualified appraisers appointed by the BOARD and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the OWNER/OPERATOR, all said bus at its appraised value.

L. TERMINATION OF CONTRACT BY OWNER/OPERATOR: Subject to procedures hereinafter set forth, the OWNER/OPERATOR may cancel this contract before its expiration by the following procedures:

(1) The OWNER/OPERATOR shall serve a written notice upon the BOARD in person or by registered or certified mail, with a copy of such notice provided to the state transportation director, specifying the reason for cancellation.

(2) The notice shall also specify the date at which such cancellation shall be effective, but not less than sixty (60) calendar days after the service of notice.

(3) Cancellation of the contract shall be effective only after the BOARD grants written consent and notice provided to the state transportation director.

(4) This contract shall not be assigned to another individual or corporation.

(5) In the event that this contract is terminated or not renewed, the [state superintendent] secretary of public education shall calculate the remaining number of years that the bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The DISTRICT shall deduct an amount equal to that value from any remaining amount due on the contract. If no balance remains on the contract, the OWNER/OPERATOR shall reimburse the DISTRICT an amount equal to the value calculated.

(6) In the event that this contract is terminated or not renewed, the buses owned by the OWNER/OPERATOR and used pursuant to the terms of this contract as set forth in appendix A herein shall be appraised by three qualified appraisers appointed by the BOARD and approved by the state transportation director. The operator succeeding to the contract shall purchase with the approval of the OWNER/OPERATOR all said bus at its appraised value.

IN WITNESS WHEREOF we have set our hands and seals. _____ BOARD OF EDUCATION, BY: _____ PRESIDENT, ATTEST: _____

SECRETARY, DECLARATION OWNER/OPERATOR hereby declares that he/she has no ownership interest of any type or degree in any fleet service contract with the BOARD, including without limitation, an interest in the nature of legal or rightful title, possessory interest, or a beneficial, equitable or pecuniary interest.

OWNER/OPERATOR DATE _____

M. Appendix A (Part I), INDIVIDUAL OWNER OPERATOR EQUIPMENT CONTRACT

Bus #	Owner Code	Year	Model	Seating	Lift	Vehicle Identification	License Plate	Rental Fee

N. Appendix A (Part II) INDIVIDUAL OWNER OPERATOR EQUIPMENT CONTRACT

Bus #	Route Mileage	Route Description (area served)

O. APPENDIX B INDIVIDUAL OWNER OPERATOR EQUIPMENT CONTRACT 20 _____ 20 _____

SCHOOL YEAR This contract approved by the _____ (BOARD) on ____/____/____ for _____ (OWNER/OPERATOR) to operate _____ buses/routes set forth in appendix A to provide school transportation services includes the following amounts deemed necessary for OWNER/OPERATOR to carry out the terms of the contract safely, efficiently, and economically:

- (1) BUS PURCHASE/RENTAL FEE: \$ _____
- (2) TRANSPORTATION SERVICES: (estimated budget)
 - (a) fuel \$ _____
 - (b) operation & maintenance and all other expenses \$ _____
- (3) total transportation services \$ _____
- (4) total estimated budget \$ _____

[12-31-98; 6.43.2.14 NMAC - Rn, 6 NMAC 9.4.1.14 & A, 10-15-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.43.3 NMAC, Sections 1, 2, 7 and 8, effective November 13, 2009.

6.43.3.1 ISSUING AGENCY:

[State Board of Education] Public Education Department
[07-30-99; 6.43.3.1 NMAC - Rn, 6 NMAC 9.4.3.1, 12-29-2000; A, 11-13-2009]

6.43.3.2 SCOPE:

Provisions of [Chapter 43, Part 3] this rule apply to public school districts that receive transportation distributions in accordance with Sections 22-8-26, 22-8-29, 22-8-29.1, 22-8-29.4, and 22-8-29.6 NMSA, 1978.
[07-30-99; 6.43.3.2 NMAC - Rn, 6 NMAC 9.4.3.2, 12-29-2000; A, 11-13-2009]

6.43.3.7 DEFINITIONS:

A. **Department** - The [state department of public education] public education department.

B. **Transportation distribution** - An amount of funding that each school district receives as a result of the operational formula calculation established in Sections 22-8-29, 22-8-29.1, 22-8-29.4, and 22-8-29.6 NMSA, 1978.

C. **Other transportation related services** - Other transportation services that includes the actual transportation of students to such events as follows: ancillary services, school to work

programs, educational activities, before and after school programs, and school sponsored athletic programs.

D. **To - and - from transportation**

- Services provided from home to school and from school to home each day that school is in session for students in grades kindergarten through twelve attending public school within the school district and of three and four-year old children who meet the [state board] department approved criteria and definition of developmentally disabled and for transportation of students to and from their regular attendance centers and the place where approved vocational education programs are being offered.

E. **Remaining balance**

- Unexpended balance at the end of any fiscal year that is not obligated or necessary to meet the to-and-from transportation services included in the school district budget.
[07-30-99; 6.43.3.7 NMAC - Rn, 6 NMAC 9.4.3.7, 12-29-2000; A, 11-13-2009]

6.43.3.8 REQUIREMENTS OF THE [DEPARTMENT OF EDUCATION] PUBLIC EDUCATION DEPARTMENT:

The department is responsible for determining the distribution for each school district in accordance with Sections 22-8-26, 22-8-29, 22-8-29.1, 22-8-29.4, and 22-8-29.6 NMSA 1978.

A. **The department shall** calculate the remaining balances for each school district and submit the amount to each school district that they are allowed to maintain and use for to-and -from operations and other transportation related services.

B. **The department shall** prepare budget and reporting forms for the remaining balances carried forward and provide them to each school district.

[07-30-99; 6.43.3.8 NMAC - Rn, 6 NMAC 9.4.3.8, 12-29-2000; A, 11-13-2009]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.43.4 NMAC, Sections 1, 8 and 9, effective November 13, 2009.

6.43.4.1 ISSUING AGENCY:

[State Board of Education] Public Education Department
[6.43.4.1 NMAC - N, 10-15-01; A, 11-13-09]

6.43.4.8 LOCAL SCHOOL DISTRICT AND CHARTER SCHOOL RESPONSIBILITIES:

A local school district shall negotiate with a charter school to provide transportation to eligible students. Transportation services are confined within the limits established by the public school district, in conjunction with the charter school. The transportation limits shall be within the school district boundary or as adjusted in accordance with an approved school district transportation boundary agreement.

A. Charter schools shall negotiate to-and-from transportation services for eligible students by means of a school bus [~~and/or~~] or a per capita feeder

agreement only. The charter school may elect not to provide transportation services.

B. If the to-and-from transportation for the charter school can be provided by utilizing the existing to-and-from services ~~and/or~~ or resources, the cost to the charter school shall not exceed the amount generated by the eligible student allocation. Additional cost for to-and-from services beyond that level shall be paid by the charter school as negotiated with the school district, unless the services can be provided at no additional cost to the school district or the school district chooses to cover the additional cost from the transportation allocation.

C. Should a school district establish a separate to-and-from transportation system, where such services are exclusively for charter school students, the costs associated are not considered additional to the charter school. The charter school would not generate any additional allocation for the separate to-and-from services and the school district shall be responsible for those costs from the transportation allocation.

D. A copy of the negotiated to-and-from school transportation service agreement between the school district and charter school shall be maintained on file with the school district and the charter school.

E. A separate transportation budget for the charter school shall be submitted to the ~~[state department of public education]~~ public education department for review or approval.

F. The school district shall determine the routes and stops in accordance with section 22-16-4 NMSA 1978. A request may be made to the state transportation director for new equipment based upon need identified by the school district.

G. The charter school shall provide information required by the school district to meet the reporting requirements of the state transportation director. The school district is responsible for reporting to the state transportation director the information collected on transportation from the charter school.
[6.43.4.8 NMAC - N, 10-15-01; A, 11-13-09]

6.43.4.9 ~~[STATE DEPARTMENT OF PUBLIC EDUCATION]~~ **PUBLIC EDUCATION DEPARTMENT RESPONSIBILITY:** The state transportation director shall calculate and provide the operational amounts generated by formula for the charter school and the school district.
[6.43.4.9 NMAC - N, 10-15-01; A, 11-13-09]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.81.2 NMAC, Sections 1, 2, 5, 6, 7, and 8, effective November 13, 2009. The part name is also amended.

PART 2 REQUIREMENTS FOR NONPUBLIC SCHOOLS AND FOR ~~[STATE BOARD OF EDUCATION]~~ PUBLIC EDUCATION DEPARTMENT ACCREDITATION

6.81.2.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department
[12-31-98, 07-30-99; 6.81.2.1 NMAC - Rn, 6 NMAC 30.2.1.1, 06-14-01, A, 11-13-09]

6.81.2.2 SCOPE: This ~~[regulation]~~ rule applies to all ~~[private (nonpublic)]~~ nonpublic and BIE schools.
[12-31-98; 6.81.2.2 NMAC - Rn, 6 NMAC 30.2.1.2, 06-14-01, A, 11-13-09]

6.81.2.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section.
[12-31-98; 6.81.2.5 NMAC - Rn, 6 NMAC 30.2.1.5, 06-14-01, A, 11-13-09]

6.81.2.6 OBJECTIVE: To provide a comprehensive framework within which ~~[private (nonpublic)]~~ nonpublic and BIE schools that desire ~~[state board of education]~~ department accreditation status can attain it.
[12-31-98; 6.81.2.6 NMAC - Rn, 6 NMAC 30.2.1.6, 06-14-01, A, 11-13-09]

6.81.2.7 DEFINITIONS: ~~[Reserved]~~

A. "AAASCU" means the Adventist accrediting association of schools, colleges and universities.

B. "Accreditation" means the recognition by the department that a nonpublic or BIE school meets standards set by an accrediting entity recognized by the department.

C. "Accrediting entity" means one of the entities listed in 6.81.2.7 NMAC and any other entity approved by the department as an accrediting entity of nonpublic schools pursuant to this rule.

D. "ACSI" means the association of Christian schools international.

E. "ACTS" means the association of Christian teachers and schools.

F. "BIE school" means a bureau of Indian education school that is governmentally owned and controlled, located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational.

G. "CSI" means the Christian schools international.

H. "Department" means the public education department.

I. "Division" means the charter schools division of the public education department.

J. "ICAA" means the international Christian accrediting association.

K. "ISAS" means the independent schools association of the southwest.

L. "NAEYC" means the national association of the education of young children.

M. "NECPA" means the national early childhood program accreditation commission.

N. "NLSA" means the national Lutheran schools association.

O. "NMNCA" means the New Mexico north central association.

P. "NNCA" means the Navajo north central association.

Q. "Nonpublic or private school" means a school, other than a home school, that offers on-site programs of instruction and is not under the control, supervision or management of a local school board;

R. "Secretary" means the secretary of the New Mexico public education department.

[12-31-98; 6.81.2.7 NMAC - Rn, 6 NMAC 30.2.1.7, 06-14-01; 6.81.2.7 NMAC - N, 11-13-09]

6.81.2.8 REQUIREMENTS FOR ~~[STATE BOARD]~~ DEPARTMENT ACCREDITATION OF ~~[PRIVATE (NONPUBLIC)]~~ NONPUBLIC SCHOOLS:

A. Pursuant to the requirement of ~~[22-2-2(E)]~~ 22-2-2(I), NMSA 1978, all ~~[private (nonpublic)]~~ nonpublic schools shall make attendance reports as required by the ~~[New Mexico state department of education (NMSDE)]~~ department, and shall comply with the requirements of 24-5-4, NMSA 1978, (Reports on Immunization Status), 22-13-14, NMSA 1978 (~~[Fire Drill Report]~~) (Emergency Drills), 22-2-8.1, NMSA 1978 (Length of School Day), 22-12-2, NMSA 1978 (Compulsory School Attendance) and 22-12-7, NMSA 1978 (Enforcement of Attendance Law).

~~[B. In addition to the requirements of 22-2-2(L) and 24-5-4, NMSA 1978 and pursuant to 22-2-2(F), NMSA 1978, any private (nonpublic) school wishing to be accredited by the SBE may request accreditation if:~~

~~(1) the school has been accredited by a regional or national accrediting agency that has been approved by the state board of~~

education;

~~(2) the approved accrediting agency has recommended a state board of education approved accreditation classification and provided copies of pertinent evaluations to the nonpublic schools commission;~~

~~(3) the school has been recommended for state board of education accreditation by the nonpublic schools commission; however, the state board of education is not bound by the recommendation of the nonpublic schools commission or any other accrediting agency.]~~

B. Nonpublic schools accredited by the AAASCU, ACSI, ACTS, CSI, ICAA, ISAS, NAEYC, NLSA, NECPA, NMNCA or NNCA shall be deemed to be accredited by the department unless the accrediting entity's accreditation status is later suspended, limited, or terminated by the department or unless the schools' accreditation status is suspended, limited, or terminated by its own accrediting entity.

~~C. [The state department of education, on its own initiative, or on a recommendation by the state board of education, at any time shall have the authority to monitor the operation of private (nonpublic) schools seeking and/or holding state board of education accreditation.] The department shall have the authority to observe the operation of a nonpublic or BIE school in the state seeking or holding department accreditation.~~

D. The division shall maintain and keep current a list of all nonpublic schools accredited by the department. The list shall contain the name of the school, its mailing and email addresses, the name of its head administrator, its telephone number and its accrediting entity or entities.

E. Nonpublic or BIE schools seeking accreditation in New Mexico shall obtain and maintain accreditation from one of the 11 accrediting entities listed in the definition section of this rule or any other entity approved by the department as an accrediting entity.

F. Any accrediting entity seeking acknowledgement by the department of their accrediting status in New Mexico shall contact the division by written inquiry and provide information requested by the division that demonstrates the accrediting entity's:

(1) ability to evaluate a school under set, rigorous standards;

(2) accreditation standards are based primarily on research and factors that facilitate student academic achievement;

(3) experience outside the state of New Mexico, if any, in accrediting nonpublic schools;

(4) willingness to share its research data, academic standards and school-specific

accreditation reports with the division;

(5) use of peer evaluation and periodic site visits to assess whether a nonpublic school meets that entity's standards and continues to meet those standards;

(6) collection of documentation to verify that a nonpublic school meets and continues to meet that entity's standards; and

(7) authority to suspend, limit or terminate its accreditation of a nonpublic school.

G. The charter schools division of the department may limit, suspend or terminate the accrediting status of an accrediting entity listed in the definition section of this rule for failure to apply its own set accrediting standards on schools it accredits.

H. The division may deny accrediting status of an accrediting entity for failure to apply its own accrediting standards to schools it accredits or for failure to provide the information or make the demonstrations enumerated in Subsection F of 6.81.2.8 NMAC.

I. Any accrediting entity aggrieved by a decision of the division may, within 30 days of the decision, appeal in writing to the secretary. The secretary or the secretary's designee shall issue a final written decision within 90 days of the appeal. At the time of its filing an appeal, the aggrieved accrediting entity shall include its justification as to why the decision should be reversed or altered and shall attach all supporting documentation including the decision it is appealing. No further documentation shall be filed by the accrediting entity unless leave of the secretary is requested and granted. A decision from the secretary or the secretary's designee shall be made on the basis of the documentation submitted and input from the division, unless oral argument is requested by the accrediting entity and granted by the secretary or secretary's designee.

[12-31-98; 6.81.2.8 NMAC - Rn, 6 NMAC 30.2.1.8, 06-14-01; A, 11-13-09]

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

This is an amendment to 14.6.4 NMAC Section 8, Subsections D and F effective 12-14-09.

**14.6.4.8 J O U R N E Y M A N
CERTIFICATION.**

A. General Information.

(1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed

is required of all individuals performing electrical wiring, or mechanical and plumbing work; provided however, that an apprentice, as defined in Section 60-13-2 of the act, may work under the direct supervision of a validly certified journeyman, as defined in Section 60-13-2 of the act, who is employed by a validly licensed person, as defined by 60-13-2 of the act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the contractor classifications and scopes.

(2) Journeyman certifications shall be issued such that each certificate parallels the license classification numbers and scopes set forth in 14.6.6 NMAC.

(3) A journeyman certificate of competence is issued to an individual only and is not transferable or assignable.

(4) No individual under the age of eighteen (18) shall be issued a certificate of competence.

(5) A journeyman may engage in the trade authorized by the certificate of competence issued to him/her only when employed by an entity (1) that is validly licensed to perform the type of work for which the journeyman is certified; or, (2) holding valid annual permit authorizing the entity to engage in the type of work for which the journeyman is certified.

(6) For information regarding compliance with the Parental Responsibilities Act, revocations and suspensions and administrative penalties, please see [section 14.6.3.8 H. and I. and section 14.6.3.9 of] Subsections H and I of 14.6.3.8 NMAC and 14.6.3.9 NMAC.

B. Application.

(1) An application submitted for a journeyman certificate of competence shall be on a form approved by CID and shall be accompanied by the prescribed certification fee.

(2) An incomplete or insufficient application shall be rejected and returned to the applicant with a statement of the reason for the rejection.

(3) All requirements for certification must be met within six (6) months after the date the application is received by CID or its designee. Any application not completed within the six (6) month period shall expire and any fees paid in connection with the expired application shall automatically forfeit.

(4) The applicant must submit proof of the required experience with the application on form(s) approved by CID. No applicant shall be eligible to take an examination for a certificate of competence before proof of experience is submitted and approved.

(5) Examination.

(a) No applicant for a journeyman certificate is eligible to take an exam until documentation establishing satisfaction of

the applicable work experience requirement has been received and approved by CID or its designee.

(b) Examinations shall be administered by CID or its designee according to a schedule which shall be published.

(c) A passing examination score is seventy percent (75%) or above.

(d) An applicant who fails to appear for a scheduled examination or fails to attain a passing score of at least 75% may take another regularly scheduled exam, provided the applicant reapplies to take the exam, pays the fee, and does not repeat the exam more than twice in any thirty (30) day period.

(e) If CID or its agent has determined that an applicant has cheated, the exam shall be deemed invalid, all fees shall be forfeited, any certificate issued on basis of that examination shall be automatically and immediately voided, and the applicant will not be eligible to take any examination administered by CID or its designee for one (1) year after the date of such event.

C. Renewal.

(1) CID, or its designee, shall mail to every certificate holder a renewal application form at least thirty (30) days prior to the expiration of such certificate to the certificate holder's current address of record. Whether or not the application is received, it is the sole duty and responsibility of each certificate holder to timely renew his/her certificate. Incomplete or inaccurately completed renewal [forms] applications shall be rejected.

(2) No journeyman certificate [in the journeyman electrician (JE98 or EE98-J) classification with] shall be renewed in the absence of proof of compliance with [all] the continuing education requirements set forth in [section D below] Subsection D of this section.

(3) The filing date of the renewal application shall be the date the envelope is postmarked or, if it is hand delivered, the date it is received by CID, or its designee.

(4) If an application for renewal is not timely received or, if it is received but rejected for failure to comply with renewal requirements, the certificate shall be suspended and shall be subject to cancellation pursuant to Section 60-13-39 C of the act.

D. Continuing education requirements.

~~(1) Section 60-13-38 F of the Act creates a continuing education requirement as a condition for renewal or reinstatement of a journeyman electrician certificate of competence:~~

~~(2) Prior to renewal of a journeyman electrician certificate of competence, or reinstatement of such a certificate after revocation, the journeyman~~

~~certificate holder is required to complete sixteen (16) hours of approved course work:~~

~~(3) A minimum of eight (8) hours shall comprise instruction on changes in the currently adopted New Mexico electrical code and national electrical code since the date on which the certificate to be renewed or reinstated was issued, last renewed or reinstated:~~

~~(4) Course sponsor(s) must submit to CID an application for course and instructor approval, on a form approved by the division, and must be approved by the commission before the course will qualify as approved course work under this section:~~

~~(5) Application for course approval must be received by CID no later than one hundred twenty (120) days before the date of which the course is to begin:~~

~~(6) Complete and legible course and instructor approval applications shall be reviewed by the electrical bureau chief and the technical advisory council to the electrical bureau no less frequently than once a calendar month. Incomplete or illegible applications will not be considered and shall be returned to the submitter without approval or denial:~~

~~(7) The electrical bureau chief and technical advisory council shall report to the commission at each commission meeting its recommendation for approval or denial on each complete application submitted for approval:~~

~~(8) The commission shall receive and consider the recommendations of the electrical bureau chief and the technical advisory council before voting on whether to approve or deny any approval application; provided, however, that the commission may appoint a sub-committee to which it delegates the authority to approve or deny any approval application. If a sub-committee is appointed, it shall receive and consider any recommendation made by the electrical bureau chief and the technical advisory council, and approve or deny approval applications accordingly, no less often than once every sixty (60) days:~~

~~(9) Course approval shall be effective for three (3) years from the date of approval, unless the course is not offered for twenty-four (24) consecutive months. Instructor approval shall be effective for three (3) years from the date of approval:~~

~~(10) At the expiration of the approval period, the course or instructor will automatically cease to be approved, without further notice from CID. Any application for re-approval must be received no less than one hundred twenty (120) days prior to the date on which the approval period expires in order to avoid a lapse in approval:~~

~~(11) The decision of the commission, or its designated sub-committee, regarding the approval or denial of an application is final and is not subject to~~

~~review:~~

~~(12) To qualify as approved course work, continuing education courses must comply with the following standards:~~

~~(a) the course content must be relevant to the electrical trade and consistent with the laws and rules of the state of New Mexico;~~

~~(b) the course may be conducted in a classroom, seminar or in a home study format; and~~

~~(c) the course must be taught by an approved instructor:~~

~~(13) To be approved an instructor must either be currently teaching or have taught at least one course related to the electrical trade within the preceding two (2) years in one of the following programs:~~

~~(a) an electrical program that is approved by the vocational education division of the state of New Mexico department of public education and offered in the curriculum of a New Mexico trade school, college or university;~~

~~(b) a program, the objectives of which relate to the electrical trade, that is offered through a professional association or organization representing licensed electricians;~~

~~(c) an apprenticeship program approved by the state of New Mexico apprenticeship council or the bureau of apprenticeship and training;~~

~~(d) a program offered by a nationally recognized testing laboratory, or product manufacturer and the instructor has at least (5) years practical experience in the subject taught;~~

~~(e) an organization that provides electrical continuing education unit courses, and the instructor has at least five (5) years of practical experience in the subject taught;~~

~~(f) CID electrical bureau code education program.~~

~~(14) For each journeyman certificate holder who successfully completes an approved course, the instructor is required to submit to the CID the following:~~

~~(a) the name of the certificate holder;~~

~~(b) his/her address; and~~

~~(c) and journeyman certificate number within thirty (30) days after course completion:]~~

~~(1) The continuing education requirements for renewal of a journeyman certificate apply to the following journeyman classifications:~~

~~(a) plumbing journeyman plumber (JP), journeyman pipefitter (JPF), journeyman gas (JG), journeyman plumber-gas (JPG);~~

~~(b) mechanical - journeyman sheetmetal (JSM), journeyman sprinkler (JS), journeyman refrigeration (JR), journeyman fire protection (MS-12J or MS-14J); and~~

(c) electrical - journeyman electrician (JE98 also referred to as EE98-J) and journeyman lineman (EL-1J).

(2) Prior to renewal or reinstatement of a journeyman certificate of competence in the applicable classification, the applicant for renewal or reinstatement is required to complete a minimum of sixteen (16) hours of approved course work. Proof of completion of such course work, in a form satisfactory to the division, must be submitted with the application for renewal.

(3) A minimum of eight (8) hours of approved course work must cover the current CID code that is enforced by each journeyman classification to be renewed or reinstated.

E. Application of approval of continuing education courses and instructors.

(1) Each applicant for course approval must submit to CID an application for course and instructor approval on a form approved by the division.

(2) Application for course approval must be received by CID no later than one hundred twenty (120) days before the date on which the course is proposed to begin.

(3) Each application for course and instructor approval must be complete and legible. Incomplete or illegible applications will not be processed and will be returned to the applicant.

(4) To qualify for approval, continuing education courses must comply with the following standards:

(a) the course content must be relevant to either the plumbing, mechanical or electrical trades and be consistent with all current applicable laws and rules of the state of New Mexico;

(b) the course must be conducted in a classroom, seminar or in a home study format; and

(c) the course must be taught by an approved instructor.

(5) To qualify for approval as an instructor, an individual must either be currently teaching, or must have taught within the two years prior to application, at least one course in the electrical, mechanical or plumbing trades in one of the following programs.

(a) a plumbing, mechanical, or electrical trades training program that is approved by the vocational education division of the state of New Mexico department of public education and offered in the curriculum of an accredited New Mexico trade school, college or university;

(b) a plumbing, mechanical or electrical trade training program that is offered through a professional association or organization representing licensees in the plumbing, mechanical and electrical trades;

(c) an apprenticeship program

approved by the state of New Mexico apprenticeship council or the bureau of apprenticeship and training;

(d) a plumbing, mechanical or electrical trade training program offered by a nationally recognized testing laboratory, or product manufacturer, and the applicant has at least (5) years practical experience in the subject taught;

(e) a plumbing, mechanical or electrical trade training program sponsored by an organization that provides continuing education unit courses in the plumbing, mechanical or electrical trades, and the instructor has at least five (5) years of practical experience in the subject taught; or

(g) a plumbing, mechanical, or electrical trades training program offered by CID.

F. Approval of continuing education courses and instructors.

(1) Each application for course and instructor approval will be reviewed by the appropriate bureau chief and the technical advisory council for that bureau each calendar month.

(2) The reviewing bureau chief shall provide to the commission at each commission meeting the bureau chief's recommendation for approval or denial on each application received and reviewed by the bureau chief since the last commission meeting.

(3) The commission shall receive and consider the recommendation of the bureau chief before voting on approval of an application.

(4) Commission approval of a continuing education course and instructors shall be effective for three (3) years from the date of approval; provided, however, that approval of any course that is not offered for twenty-four (24) consecutive months shall automatically expire.

(5) On the date that is three years after the date on which approval of a course or instructor was issued, the approval will automatically expire and, without further notice from CID, such course or instructor shall no longer be approved. Application to renewal course or instructor approval must be received no less than one hundred twenty (120) days prior to the date on which the approval period expires.

(6) The decision of the commission regarding the approval or denial of an application is final and is not subject to review.

(7) Once approved, and as a condition of continuing approval, a course provider must submit to CID the following information for each journeyman certificate holder, who successfully completes an approved course, within thirty days of the completion of the course:

(a) the name of the course, approval number, and the name of the

instructor;

(b) the date on which the course was completed by the certificate holder; and

(c) the address and CID journeyman certificate number of the certificate holder.

(8) Approval of an instructor or a course will be subject-matter specific. Approval to teach courses in more than one trade or code will require the applicant to meet the experience criteria for each trade or code.

[14.6.4.8 NMAC - Rp, 14.6.4.8 NMAC, 2-1-06; A, 12-14-09]

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

This is an amendment to 16.48.2.19 effective 11/28/2009.

16.48.2.19 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL THREE:

A. On or after July 1, 2007, every individual seeking employment or employed as a level three security guard or level three armored vehicle security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six (6) months. Endorsement to carry a weapon, not including a firearm, will be granted upon successful completion of relevant and specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

B. The department shall issue a registration for a level three security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) proof of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) proof of a high school diploma or its equivalent;

(5) proof of completing a department approved training program as defined in Subsection C of 16.48.2.19

NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(6) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division;

(7) proof of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC; and

(8) beginning on July 1, 2009, proof of successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms.

C. Psychological evaluation.

(1) Requirements.

(a) Prior to certification as a level three security guard in the state of New Mexico, upon initial licensure only, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard.

(b) Evaluations cannot be more than one year old for certification purposes.

(c) A psychological evaluation shall be original, signed, and transmitted by the psychologist who performs the psychological evaluation directly to the board.

(d) The willful providing of false information or willful failure to disclose information that the applicant knows or should have known is necessary to a complete and accurate evaluation shall be grounds for denial of licensure.

(2) Evaluation standards.

(a) The purpose of these guidelines is to set minimally acceptable standards for psychological evaluation of persons seeking licensure as level three security guards in New Mexico.

(b) The psychological evaluation shall consist of the Minnesota multi-phasic inventory-2 restructured form or MMPI-2RF.

(c) The report shall incorporate all information gathered in the interview and testing, and shall contain a specific recommendation as to the applicant's suitability to carry a fire arm as a level three security guard. All psychologists performing evaluations must be licenses and conform to the guidelines of the American psychological association regarding storage of records.

(3) Records.

(a) A list of licensed psychologists who are able to administer the exam will be available on the website or from the board office.

(b) A psychological evaluation shall not be maintained in applicant's file. A psychological evaluation shall be maintained by the board administrator in secure storage separate from applicant files.

(c) The psychological evaluation is a confidential record that shall not be subject to disclosure pursuant to the Inspection of Public Records Act Section 14-2-1, et seq. NMSA 1978.

[~~E~~] **D.** The following sixteen (16) hour curriculum, with a minimum of four (4) hours dedicated to the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration:

(1) the five (5) firearms safety rules;

(2) weapon manipulation;

(3) types of sidearms;

(4) firearm retention and equipment;

(5) firearm storage devices;

(6) locking devices;

(7) ammunition and storage;

(8) training household members;

(9) hazards of loaded firearms in the home;

(10) mental conditioning and tactics;

(11) weapon manipulation and marksmanship;

(12) threat recognition and judgmental shooting;

(13) laws pertaining to firearms, deadly physical force and the exercise of the powers of arrest - mandatory four (4) hours minimum.

[16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 09/24/08; A, 11/28/09]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2009

Volume XX	Submittal Deadline	Publication Date
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
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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

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