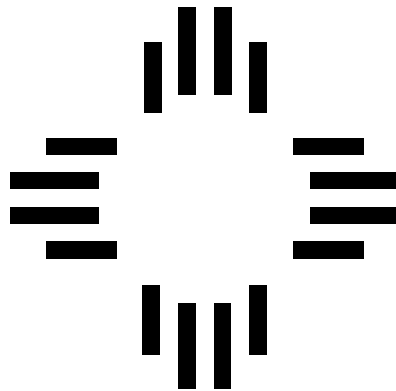


New Mexico Register

Volume XIII, Issue Number 3
February 14, 2002



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

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Administrative Law Division
2002

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New Mexico Register

Volume XIII, Number 3

February 14, 2002

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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." 14-4-5 NMSA 1978

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

PO Box 509
Santa Fe, NM
505-827-6375

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 22, 2002. The meeting will be held in the Conference Room of the Board office, 491 Old Santa Fe Trail, Lamy Building, beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public

documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The Protective Services Division (PSD) will hold a public hearing in Santa Fe on March 15, 2002 from 9:00 a.m. to 11 a.m. in the Public Employees Retirement Association (P.E.R.A.) Building, 1120 Paseo de Peralta, 2nd floor conference room, number 229, to take comments regarding proposed revisions to the PSD Child Placement Agency Regulations.

The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments

received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8416. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The proposed policy revisions may be reviewed at any Protective Services Division county office. County office locations may be determined by calling 505-827-8400 for location information. The proposed policy revisions may also be reviewed between 8:00 a.m. - 5:00 p.m. (MST) at the PSD Director's Office, Room 254, In the P.E.R.A. building in Santa Fe, NM. Copies of the proposed policies may be obtained by contacting Kirk Rowe, Children's Section Manager, CYFD-PSD, P.O. Drawer 5160, Santa Fe, NM 87502-5160, or by calling 505-827-8416. Copies can also be requested through the use of the New Mexico relay system by calling 505-827-7586.

NEW MEXICO STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The New Mexico State Board of Education ("Board") will convene on Wednesday, February 27, 2002. Committee meetings will be held on Wednesday, February 27 and Thursday, February 28, 2002. The regular meeting will convene on Friday, March 1, 2002, at 8:00 a.m. The meetings are scheduled to be held at the Santa Fe Community College (Jemez 3 Room), 6401 Richards Avenue, Santa Fe, New Mexico. Information regarding any change in the location of the meetings, the addition of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The New Mexico State Department of Public Education will recommend that the Board take action on

RULE NUMBER	PROPOSED ACTION	(PROPOSED) RULE NAME
6.2.2 NMAC	Amend rule	Operational Bylaws of the Educational Standards Commission ▶
6.19.1 NMAC (Proposed)	Adopt new rule	Public School Accountability: General Provisions ✕
6.19.2 NMAC (Proposed #)	Adopt new rule	Public School Accountability: Public School Accountability System ✕
6.30.6 NMAC (Proposed #)	Adopt new rule	Review of Local Curriculum ▶

- ▶ Instructional Services Committee
- ✕ Accountability Committee

A public hearing for the purpose of affording members of the public the opportunity to offer comments regarding 6.2.2 NMAC (Operational Bylaws of the Educational Standards Commission) will be held on Tuesday, February 19, 2002, from 7 p.m. to 8 p.m. in Room 100, Smith Brasher Hall 717 University Blvd., SE, Albuquerque, New Mexico.

Public hearings for the purpose of affording members of the public the opportunity to offer comments regarding proposed new regulations 6.19.2 NMAC (Public School Accountability System) and 6.30.6 NMAC (Review of Local Curriculum) have been previously held. After

considering public input regarding proposed new rule 6.19.2 NMAC, staff will recommend that the definitions and other general provisions be promulgated as 6.19.1 NMAC.

Copies of 6.2.2 NMAC (Operational Bylaws of the Educational Standards Commission), 6.19.1 NMAC (Public School Accountability: General Provisions), and 6.19.2 NMAC (Public School Accountability: Public School Accountability System) may be obtained from Inez Naranjo at 827-6683. Copies of proposed new regulation 6.30.6 NMAC (Review of Local Curriculum) may be obtained from Laura Dalton at (505) 827-3876. Written comments regarding the proposed rulemaking should be directed to Mary Jo Bradley at the State Department of Public Education, State Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or faxed to Ms. Bradley at (505) 827-6520 before 5 p.m. on Thursday, February 21, 2002. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the State Board of Education Office at 827-6571 as soon as possible.

The Board attempts to follow the order and date of items as listed on the Agenda; however, the order and date of specific items are tentative and may vary from the printed Agenda.

Comments, questions, or requests for copies of the Agenda should be directed to Mary Jo Bradley, State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or (505) 827-6571.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC HEARING

The New Mexico Environmental Improvement Board ("EIB") will hold a public hearing after its regularly convened meeting on April 12, 2002, beginning at 8:30 at the City County Government Center, One Civic Plaza, 9th Floor Committee Room, Albuquerque, New Mexico

The public hearing will be held to consider the following proposed amendments to 20.5.1 NMAC, 20.5.2 NMAC and 20.5.3

NMAC. The reasons for the proposed amendments are to make parts 1-3 of 20.5 NMAC consistent with the recent legislative amendments to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14 (HWA). The HWA now provides regulatory authority for above ground storage tanks (ASTs). Previously, the HWA only provided regulatory authority for underground storage tanks (USTs). The EIB is required to adopt regulations concerning "storage tanks" which includes ASTs as well as USTs pursuant to NMSA 1978, Section 74-4-4C. Any interested persons or parties are encouraged to participate or attend.

The hearing will be conducted in accordance with 20.1.1 NMAC Environmental Improvement Board's Rulemaking Procedures, promulgated pursuant to the Environmental Improvement Act, NMSA 1978, Section 74-1-9.

The proponent of the proposed amendments is the New Mexico Petroleum Storage Tank Bureau (the "Bureau") of the New Mexico Environment Department (Department). In summary, the Bureau proposes to amend parts 1-3 as follows:

20.5.1 NMAC – General Provision

The proposed amendments in this part primarily set forth the new statutory definitions for AST as well as modify or incorporate other definitions that clarify what is covered under the universe of AST and UST. The term "storage tank" is now included in the definitions and includes UST as well as AST. This clarification is consistent with the statutory changes in the HWA.

20.5.2. NMAC – Tank Registration

The proposed amendments clarify that AST as well as UST will be required to register with the Bureau of the Department as provided in the amendments to the HWB.

20.5.3 NMAC – Annual Fee

The proposed amendments will incorporate an annual tank fee requirement for AST. The late fee payment section will also be amended to eliminate interest charges and include only an annual late fee charge.

All interested persons will be provided with a reasonable opportunity to submit data, views or arguments orally or in writing and examine witnesses testifying at the hearing. Any interested persons may also submit a general written statement concerning the

regulations before the hearing by filing the statement with the Secretary of the EIB, Maria Voyles at Environment Department, Secretary to EIB, P.O. Box 26110, Santa Fe, New Mexico 87502. Any person may provide a general oral statement or non-technical testimony concerning the proposed regulations at the hearing.

Any person who intends to provide a technical written statement or technical oral testimony concerning the proposed changes to the regulations shall file a statement of intent to present technical testimony on or before April 2, 2002. The statement of intent to present technical testimony shall:

1. Identify the person filing the statement;
2. State whether the person filing the statement supports or opposes the regulations;
3. Identify each fact and/or expert witness, qualifications of each witness, including name, address, affiliations and educational work background;
4. Summary or copy of any direct testimony of each witness, stating any opinions to be offered by such witness, and an explanation of the basis for such opinions;
5. Identify all exhibits anticipated to be offered;
6. List or make available all technical materials relied upon by each witness in making a statement of technical fact or opinion contained in his or her direct testimony; and
7. Include the text of any recommended modifications to the proposed regulatory changes.

Interested persons may review hard copies of the proposed amendments during regular business hours at the Storage Tank Bureau located at 2044 Galisteo Street, Suite A, in Santa Fe, New Mexico, at the Albuquerque field office located at 4131 Montgomery NE, or at the Environment Department's web site at www.nmenv.state.nm.us. You may also contact Jerry Schoeppner at 984-1939 to obtain hard copies of the proposed amendments.

The EIB may make a decision on the proposed regulatory changes at the conclusion of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aide, i.e. sign language interpreter, to participate in any aspect of this hearing, please contact Cliff Hawley. Mr. Hawley's telephone number is (505) 827-2844, and his address is New Mexico Environment Department,

1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502 (TDD or TDY users please access this number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.

NEW MEXICO STATE GAME COMMISSION

NOTICE OF MEETING

The State Game Commission will meet at Santa Fe Community College, Jemez Rooms 1 and 2, 6401 Richards Avenue, Santa Fe, New Mexico 87505 on February 8, 2002, at 9:00 a.m. – 5:00 p.m.

The proposed agenda may be found by accessing the website of the New Mexico Department of Game and Fish at www.gmfish.state.nm.us or by contacting the office of the Director, New Mexico Department of Game of Fish, P.O. Box 25112, Santa Fe, New Mexico or by calling (505) 476-8008

**Notations under each agenda items are for discussion only and commission action will not be limited to said notations.*

NOTE: *Persons attending this Commission meeting who wish to address the Commission regarding agenda items appearing in Old Business and New Business must fill out and submit to the recording secretary an agenda discussion request card available at the table with the agenda copies.*

Those who desire to address the Commission and who claim to represent an organization must provide the following information:

The number of members in the organization, frequency of the organization's meeting and either a signed statement from that organization's president that states the organization has discussed the topic and approved the position that the representative is presenting, or proof that they are a registered lobbyist for the organization.

AGENDA ITEM NO. 1. Meeting Called to Order

AGENDA ITEM NO. 2. Roll Call

AGENDA ITEM NO. 3. Approval of Minutes (January 3, 2002)

AGENDA ITEM NO. 4. Approval of Agenda

OLD BUSINESS

AGENDA ITEM NO. 5. Amendments to 2002-2003 Cougar Rules (19 NMAC 31.8.23 and 19 NMAC 30.6.9) Presented by Luis Rios

The Commission will consider and or act upon the 2002-2003 cougar regulation (19 NMAC 31.8.23) to increase the bag limit to two cougars and the season length to year round in Game Management Units 29, 30 and 34. The Commission will also take action to amend the Preventative Lion Control in Unit 30 regulation (19 NMAC 30.6.9) to expand the preventative take to all of Unit 30 and to increase the preventative take from 14 to 20 cougar. These amendments are pursuant to draft regulation language given the Department at the January 3, 2002 Commission meeting.

AGENDA ITEM NO. 6. Strategy for Improving Statewide Deer Population.

NEW BUSINESS

AGENDA ITEM NO. 7. Amendments to 2002-2003 Elk Rules (19 NMAC 31.8.24) Presented by Luis Rios

The Commission will consider and or act upon amendments to the 2002-2003 Elk Rule (19 NMAC 31.8.24) to allow private land elk authorizations to be issued in Unit 14 due to the change from an unlimited to a limited hunt strategy.

AGENDA ITEM NO. 8. Adoption of the Long Range Turkey Plan. Presented by Bill Dunn

The Department will present the final draft of the Long-Range Plan for the Management of Wild Turkey in New Mexico and recommend adoption by the Commission.

AGENDA ITEM NO. 9. Amendments to the Importation Rule (19 NMAC 35.7) Presented by Mike Sloane

The Commission will consider and or act upon amendments:

1. Require the testing for bacterial kidney disease in fish similar to the current testing for whirling disease.
2. Add under 19 NMAC 35.7.12 a section that states that presumptive findings of any disease with no confirmatory testing will be considered a positive finding of the disease.
3. Add under 19 NMAC 35.7.12 a section that states that any facility deemed to have tested positive under this regulation shall be barred from importation into the State of New Mexico until the facility is shown to be pathogen free for a minimum of two consecutive years and has met all

other requirements in this regulation. Add under 19 NMAC 35.7.12 a section that deals with renovated facilities ability to meet importation requirements.

AGENDA ITEM NO. 10. Amendment to the Manner and Method Rule (19 NMAC 31.10) Presented by Mike Sloane

The Commission will consider and or act upon exempting the Department from this regulation when conducting activities requiring the deployment of piscicides, herbicides and pesticides required to complete approved management activities.

AGENDA ITEM NO. 11. Rio Grande Cutthroat Trout Management Plan. Presented by Yvette Paroz

The Department will present the final draft of the Management Plan for the Rio Grande Cutthroat Trout in New Mexico and recommend adoption by the Commission.

AGENDA ITEM NO. 12. Amendment to the Fisheries Rule (19 NMAC 31.4) Presented by Mike Sloane

The Commission will consider and or act upon amendments to amend 19 NMAC 31.4.16 to allow for youth to fish and take brood pond trout at Parkview Hatchery in a Department organized fishing event.

AGENDA ITEM NO. 13. Legislation

- State
- Federal

AGENDA ITEM NO. 14. Commission/Department Discussion

- Schedule future commission meetings.

AGENDA ITEM NO. 15. General Public Comments: (Comments limited to 3 minutes.)

AGENDA ITEM NO. 16. Closed Executive Session

NOTE: The meeting will be adjourned upon completion of the agenda or up to those items that time allows. Any items not discussed will be on the following meeting's agenda.

The Agenda is subject to change up to 24 hours prior to the scheduled meeting date and time as deemed necessary by the Chairman. To inquire about agenda changes, please contact the Office of the Director at (505) 476-8008.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please

contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the agenda and minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

**NEW MEXICO
HUMAN SERVICES
DEPARTMENT**

MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 2:00 p.m., on March 12, 2002, at the New Mexico State Library, in Room 2027, located at 1205 Camino Carlos Rey, Santa Fe, New Mexico. The subject of the hearing will be Home & Community Based Medicaid Waiver Services.

Individuals served through the Home and Community-Based Waiver programs receive a variety of services, which may include Case Management, Habilitation, Personal Care, Respite Care, Home Maker, Private Duty Nursing, Therapies, Living Supports, Nutritional Counseling, and Environmental Modifications as described in the Individual Service Plan (ISP).

Local Income Support Division Offices utilize the Medicaid Waiver eligibility regulations to determine final eligibility for Home and Community Based Waivers.

The Human Services Department is issuing the proposed changes to the eligibility regulations.

1. The definition of Developmentally Disabled has been changed to include additional types of disabilities.

2. The number of days a waiver recipient remains in a hospital, nursing facility, or Intermediate Care Facility for the Mentally Retarded has been changed to sixty consecutive days from one calendar month before a change in eligibility occurs.

3. The number of days waiver services can be suspended has been changed to with in sixty consecutive days from a full calendar month before a change in eligibility occurs for the waiver recipient.

Interested persons may testify or submit written comments no later than 5:00 p.m., March 12, 2002, to Robin Dozier Otten, Deputy Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New

Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

**NEW MEXICO
DEPARTMENT OF LABOR
JOB TRAINING DIVISION**

**NOTICE OF PUBLIC HEARING FOR
RULE MAKING**

The New Mexico Department of Labor (NMDOL) State Administrative Entity (SAE), State Planning, Policy and Technical Assistance (SPPTA) Bureau will conduct a public hearing for rule making on the following amendments to the following Issuances:

1. 11 NMAC 2.A.12-99 "Welfare to Work (WtW) Eligibility Determination and Verification Guidelines." Exhibit 13.2 at 13.2.3 is amended to conform to the Welfare-to-Work and Child Support Amendments of 1999 which revised the eligibility criteria under the 70% provision. A revised eligibility determination form is included.

2. 11.2.15 NMAC "Workforce Investment Act (WIA) Grievance Procedures." This amendment incorporates specific language regarding the NMDOL Employment Security Division's One-Stop Centers EEO/Non-criminal grievance and appeals procedures at 11.2.15.8 B.

The public hearing will be held on March 18, 2002 at 9:00 a.m. in the Aspen Plaza conference room, Room 201, located at 1596 Pacheco Street, Santa Fe, New Mexico. Persons with disabilities who are planning to attend the public hearing and require accommodation or who want the proposed rule amendments sent to them should submit a written request to the attention of: Carol Szpakowski, New Mexico Department of Labor - Job Training Division, SPPTA Bureau, P.O. Box 4218, Santa Fe, NM 87502

Those individuals needing special assis-

tance should identify the type of accommodations needed. Such accommodations may not be guaranteed if a request is not made with sufficient notice.

Inquiries or requests for copies of the above referenced rule amendments may be directed at the address above or by calling Carol Szpakowski at (505) 827-1636.

**NEW MEXICO PUBLIC
SCHOOL CAPITAL
OUTLAY COUNCIL**

**Capital Outlay Unit
State Education Building
300 Don Gaspar
Santa Fe, New Mexico 87501-2786**

NOTICE OF PROPOSED RULEMAKING

The Public School Capital Outlay Council ("Council") is authorized to promulgate rules pursuant to Section 22-24-5.H New Mexico Statutes Annotated 1978. The Council will consider the following:

**Rule Number : 6.27.3 NMAC
Proposed Action : Amend rule
(Proposed)Rule Name: POST-GRANT PROCEDURES**

The text of the proposed rules, the date, location, and time of the public hearing(s) to consider comments on the rules, and information regarding submission of written comments may be obtained from Tim Berry, Assistant Director, Deficiencies Correction Unit, (505) 988-5989. This information has been mailed to public school districts and charter schools.

The Council will act on the proposed rules at a public meeting for which notice is given in accordance with the Council's Open Meetings Policy. The agenda will be available at least twenty-four hours prior to the meeting from Lena Archuleta, Administrative Assistant, Capital Outlay Unit, at 827-3963.

**End of Notices and
Proposed Rules Section**

Adopted Rules and Regulations

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This Part 16.NMAC 60.10, Parental Responsibility Act filed September 27, 1995, is hereby repealed and replaced by 16.60.5 NMAC, effective February 14, 2002.

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 60 PUBLIC ACCOUNTANTS
PART 1 GENERAL PROVISIONS**

16.60.1.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.
[16.60.1.1 NMAC – Rp 16 NMAC 60.1.1, 02-14-2002]

16.60.1.2 SCOPE: General public, all individuals certified/licensed as a certified public accountant (CPA) or registered public accountant (RPA), individuals seeking to be a CPA and all CPA/RPA business entities registered as a firm or seeking registration as a CPA/RPA firm with the board.
[16.60.1.2 NMAC – Rp 16 NMAC 60.1.2, 02-14-2002]

16.60.1.3 STATUTORY AUTHORITY: Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.
[16.60.1.3 NMAC – Rp 16 NMAC 60.1.3, 02-14-2002]

16.60.1.4 DURATION: Permanent.
[16.60.1.4 NMAC – Rp 16 NMAC 60.1.4, 02-14-2002]

16.60.1.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.
[16.60.1.5 NMAC – Rp 16 NMAC 60.1.5, 02-14-2002]

16.60.1.6 OBJECTIVE: The objective of Chapter 16, Part 1 is to establish the general provisions for the rules filed in this chapter; provide definitions of terms for rules filed in this chapter; delineate the headquarters location of the board and board operations; and prescribe board fees for public accountancy board certification, licensing and firm registration actions, and

board services.
[16.60.1.6 NMAC – Rp 16 NMAC 60.1.6, 02-14-2002]

16.60.1.7 DEFINITIONS:

A. “acceptance letter” means a document issued by the administering entity indicating the type of report (unmodified, modified, or adverse) when all review documents and, if applicable, all remedial/corrective actions have been completed and accepted by the peer review committee.

B. “act” means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA1978.

C. “administering entity” means an entity (any form of organization allowed by state law or professional organization or association of CPA’s) that has met, and at all relevant times continues to meet, the standards specified by the board for administering the review. The board shall periodically publish a list of administering entities that have applied for and received approval.

D. “client” means the person or entity who retains a licensee for the performance of professional services.

E. “enterprise” means any person or entity who retains a licensee for the performance of professional services.

F. “financial statements” means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

G. “he, his, him” means masculine pronouns when used herein also include the feminine and the neuter.

H. “Holding out to the public as a permit holder or registered firm” means the phrase “holding himself out to the public as a permit holder or registered firm” as used in the definition or “practice of public accountancy” in Section 3G of the Act, and in these rules it means any representation of the fact that a certificate holder holds a permit or is a registered firm in connection with the performance of, or an offer to perform, services for the public. Any such representation is presumed to

invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

I. “manager” has, when used in these rules, the same meaning as the term “manager” in a limited liability company.

J. “member” has, when used in these rules, the same meaning as the term “member” in a limited liability company.

K. “peer review” means a program to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies.

L. “peer review committee” means a committee comprised exclusively of CPAs practicing public accountancy and formed by an administering entity for the purpose of accepting peer review reports submitted by firms on peer review engagements.

M. “professional services” means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

N. “public communication” means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

O. “quality review” means an interchangeable term for peer review.

P. “report” as defined in Section 61-28B3 (O) of the Act and in these rules includes forms of language which refers to financial statements, when such forms of language express or deny any assurance as to the reliability of the financial statements to which they refer. Among the possible sources of such forms of language are pronouncements by authoritative bodies describing the work that should be performed and the responsibilities that should be assumed for specified kinds of professional engagements. In addition, these pronouncements prescribe the form of report that should be issued upon comple-

tion of such engagements. A form of report prescribed by such a pronouncement will ordinarily constitute a form of language which is conventionally understood as implying assurance and expertise. For this reason, as provided in Section 17B of the Act, the term "report" includes the issuance of reports using the forms of language set out in the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Accounting and Review Services (SSARS) No. 1 as amended, modified, or superseded from time to time, for reports with respect to both "reviews" of financial statements, and also compilations of financial statements, as well as the forms of language for "special reports" set out in the AICPA's Statement on Auditing Standards (SAS) No. 14, No. 35 and No. 62 as amended, modified, or superceded from time to time. These Statements on Standards are incorporated in the AICPA Professional Standards: Code of Professional Conduct.

Q. "review or review program" as defined in Section 61-28A-31 NMSA 1978 means the review conducted under the relevant program, whether peer review or quality review.

R. "services involving accounting or auditing skills" means "services involving accounting or auditing skills" as used in the definition of "practice of public accountancy" in Section 3I of the Act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

S. "statement of compliance" means a certified statement from the human services department (HSD) stating that an applicant or licensee is in compliance with a judgment and order for support.

T. "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support. [16.60.1.7 NMAC – Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 02-14-2002]

16.60.1.8 HEADQUARTERS OF THE BOARD: The headquarters, administrative offices, and staff of the board shall be physically located at 1650 University Boulevard NE, Suite 400-A, Albuquerque, New Mexico, 87102 or a subsequent location subject to the board's approval and ratification. [16.60.1.8 NMAC – Rp 16 NMAC 60.1-8, 02-14-2002]

16.60.1.9 BOARD OPERATION:

A. The board shall meet at least 6 times each year. The chair or a quorum of the board shall have the authority to call meetings of the board. The board shall follow and apply the rules of procedure of the State of New Mexico Open Meetings Act, Sections 10-15-1 to 10-15-4, as regards notice and conduct of meetings.

B. The board shall elect annually from among its members a chair, vice-chair, secretary/treasurer and such other officers as the board may require. The officers shall assume the duties of their respective offices at the conclusion of the meeting at which they were elected. Board officers shall serve a term of 1 year but shall be eligible for reelection.

C. The chair or, in the event of the chair's absence or inability to act, the vice-chair shall preside at all meetings of the board. The board shall determine duties of other officers. [16.60.1.9 NMAC – Rp 16 NMAC 60.1.9, 02-14-2002]

16.60.1.10 FEES AND OBLIGATIONS:

A. Fees charged by the board shall be as follows:

(1) 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.

(2) Initial examination qualification review under Section 27F of the Act shall be \$75.

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

(4) Certificate application under Section 27B of the Act shall be: initial certificate, \$150; certificate renewal, \$100.

(5) Firm permit application or renewal fee under Section 27C of the Act shall be \$45 for each firm, regardless of form of entity.

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

(7) Certificate/license reinstatement fee under Section 27G of the Act shall be \$175 plus past due fees and penalties.

(8) 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.

(9) Administrative fees for services under Section 27F shall be:

(a) list of certificate or permit holders, \$.25 per name or line item;

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

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

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

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

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

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

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

(i) the board may waive charges as it deems appropriate.

(10) Fee for the transfer of licensure or examination information under Section 27E of the Act shall be \$20.

(11) Fee for notification of intent to practice in New Mexico under Section 26 of the Act shall be \$90.

[16.60.1.10 NMAC – Rp 16 NMAC 60.2.8, 02-14-2002]

HISTORY OF 16.60.1 NMAC:
Pre-NMAC History: Material in the part was derived from that previously filed with the Commission of Public Records–State Records Center and Archives; BPA 84-2, Purpose, filed 07-09-84. BPA 95-3, Definitions, filed 04-21-95. BPA 95-8, Board; Powers and Duties, filed 04-21-95.

History of Repealed Material: 16 NMAC 60.1, General Provisions, filed 09-27-95; 16 NMAC 60.2, Fees, Obligations, and Communications, filed 09-27-95; and Amendment to 16 NMAC 60.2, Fees, Obligations, and Communication, filed 12-23-99, repealed effective 02-14-2002.

Other History: 16 NMAC 60.1 General Provisions, filed 09-27-95; 16 NMAC 60.2, Fees, Obligations, and Communication, filed 09-27-95; and Amendment to 16 NMAC 60.2, Fees, Obligations, and Communications filed 12-23-99, replaced by 16.60.1 NMAC, General Provisions effective 02-14-2002.

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 60 PUBLIC ACCOUNTANTS PART 2 CERTIFIED PUBLIC ACCOUNTANT (CPA) EXAMINATION REQUIREMENTS

16.60.2.1 ISSUING AGENCY:
State of New Mexico Public Accountancy Board.

[16.60.2.1 NMAC – Rp 16 NMAC 60.3.1, 02-14-2002]

16.60.2.2 SCOPE: General public: all individuals seeking to become a certified public accountant.

[16.60.2.2 NMAC – Rp 16 NMAC 60.3.2, 02-14-2002]

16.60.2.3 STATUTORY AUTHORITY: Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.2.3 NMAC – Rp 16 NMAC 60.3.3, 02-14-2002]

16.60.2.4 DURATION: Permanent.

[16.60.2.4 NMAC – Rp 16 NMAC 60.3.4, 02-14-2002]

16.60.2.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.2.5 NMAC – Rp 16 NMAC 60.3.5, 02-14-2002]

16.60.2.6 OBJECTIVE: To delineate uniform CPA examination application procedures, education requirements, examination administration, and board procedures for dealing with cheating on the CPA examination.

[16.60.2.6 NMAC – Rp 16 NMAC 60.3.6, 02-14-2002]

16.60.2.7 DEFINITIONS: [RESERVED]

[16.60.2.7 NMAC – Rp 16 NMAC 60.3.7, 02-14-2002]

16.60.2.8 APPLICATION PROCEDURES:

A. The board may contract as its agent CPA Examination Services (CPAES), the National Association of State Boards of Accountancy (NASBA), or the American Institute of Certified Public Accountants (AICPA) or other entities it deems appropriate to undertake any aspects of examination development, delivery,

administration, qualification, or application that the board considers necessary and appropriate in its oversight and administration of the Uniform CPA Examination.

B. Applicants for the CPA examination shall meet the following requirements:

(1) Section 61-28B7 of the Act;

(2) Section 61-28B8 of the Act (Effective July 1, 2004); and provisions set forth in this rule.

C. For the current pencil and paper CPA examination, applications to take the certified public accountant examination must be made on board forms and filed with the board at least 60 days prior to scheduled and available examination dates. For the current pencil and paper examination, the application must be postmarked or hand-delivered on or before March 1 for the May examination, and on or before September 1 for the November examination or the next business day if the specified dates fall on a weekend or holiday. For computer based CPA examination applications, application deadlines shall be specified on the board prescribed application forms.

D. An application will not be considered filed until all application/qualification fees and examination fees required by these rules and all required supporting documents have been received, including photographs, official transcripts, and proof that the applicant has completed the education requirement.

E. An applicant who fails to appear for the examination shall forfeit all fees charged for both the application and the examination.

F. Prospective applicants for the CPA examination shall demonstrate to the board's satisfaction that all education requirements are met.

[16.60.2.8 NMAC – Rp 16 NMAC 60.3.9.1, 16 NMAC 60.3.9.2, & 16 NMAC 60.3.9.3, 02-14-2002]

16.60.2.9 EDUCATION REQUIREMENTS:

A. Section 61-28B7 of the Act requires a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with 30 semester hours in accounting or auditing related subjects or their equivalent as determined by the board. After July 1, 2004, Section 61-28B8 of the Act requires an applicant to have completed at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, the total educational program to include accounting or auditing related subjects or their equivalent, as determined by the board, of not fewer

than 30 semester hours.

B. The board will accept not fewer than 30 semester hours of accounting or audit related courses (3 semester hours may be in business law), without repeat, from a board-recognized educational institution. The recognized educational institution must have accepted them for the purposes of obtaining a baccalaureate degree or equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of a transcript-issuing institution.

C. A prospective CPA examination or CPA certificate candidate is considered as graduating from an accredited college or university acceptable to the board if, at the time the educational institution grants the applicant's degree, it is accredited at the appropriate level as outlined in these rules. As used in these rules, "accreditation" refers to the process of quality control of the education process. There are 3 different levels of accreditation referred to in these rules, and the degree to which the board relies on accreditation differs according to the level at which the degree granting institution is accredited. In reviewing and evaluating a candidate's educational credentials, the board may rely on accreditation by an accrediting agency at 3 different levels.

D. Level 1 accreditation is associated with the four-year, degree-granting college or university itself. The institution must be accredited by 1 or more of the following board-recognized regional accrediting agencies (or successor agencies):

- (1) Middle States Association of Colleges and Secondary Schools;
- (2) New England Association of Schools and Colleges;
- (3) North Central Association of Colleges and Secondary Schools;
- (4) Northwest Association of Schools and Colleges;
- (5) Southern Association of Colleges and Schools;
- (6) Western States Association of Schools and Colleges; and
- (7) Accrediting Council for Independent Colleges and Schools.

E. Level 2 accreditation is associated with a business school or college of business. The unit must be accredited by a national accreditation agency recognized by the board, such as the American Assembly of Collegiate Schools of Business (AACSB), following a specific and comprehensive review of its faculty, resources, and curricula. In evaluating a candidate's credentials, the board may choose to rely on this accreditation as evi-

dence that the institution's business school has met minimum overall standards of quality for such schools.

F. Level 3 accreditation is associated with an accounting program or department. The program or department must be accredited by a national accreditation agency recognized by the board such as the AACSB. Accounting programs or departments accredited in this manner have met standards substantially higher and much more specific than those required for level 1 or level 2 accreditation. For level 3 accreditation, the accounting program or department must meet a stringent set of standards that addresses faculty credentials, student quality, physical facilities, and curricula. Graduates who submit transcripts from accredited accounting programs may be deemed to have met the board's specific accounting and business course requirements.

G. If an educational institution was not accredited at the time an applicant's degree was received but is so accredited at the time the application is filed with the board, the institution will be deemed to be accredited for the purposes of this rule provided that it:

(1) certifies that the applicant's total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(2) furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the pre-accrediting courses used to qualify the applicant as an accounting major are substantially equivalent to post-accrediting courses.

H. If an applicant's degree was received at an accredited educational institution as defined in this rule, but the educational program which was used to qualify the applicant as an accounting major included courses taken at non-accredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which applicant's degree was received, provided the accredited institution either:

(1) has accepted such courses by including them in its official transcript; or

(2) certifies to the board that it will accept such courses for credit toward graduation.

I. A graduate of a four-year, degree-granting institution not accredited at the time the applicant's degree was received or at the time the application was filed will be deemed to be a graduate of a four-year accredited educational institution if:

(1) a credentials evaluation

service approved by the board certifies that the applicant's degree is equivalent to a degree from an accredited educational institution defined in this rule; or if

(2) an accredited educational institution as defined in this rule accepts the applicant's non-accredited baccalaureate degree for admission to a graduate business degree program; the applicant satisfactorily completes at least 15 semester hours or the equivalent in post-baccalaureate education at the accredited educational institution, of which at least 9 semester hours, or the equivalent, shall be in accounting; and the accredited educational institution certifies that the applicant is in good standing for continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

J. Advanced subjects completed to qualify under the above section may not be used to satisfy education requirements.

K. The board may provide a mechanism to recognize educational institutions that are not accredited at the institutional, business school, accounting program, or department level.

L. The accounting education concentration or equivalent contemplated by the Act shall consist of semester hours of credit earned as in a conventional college semester. Quarter hours will be converted by multiplying the quarter hours earned by two-thirds to determine semester hours earned. No more than 6 semester hours will be recognized for internships or life experience.

[16.60.2.9 NMAC - Rp 16 NMAC 60.3.8, 02-14-2002]

16.60.2.10 EXAMINATION ADMINISTRATION:

A. Time and place of examination: For the current pencil and paper examination, notice of the time and place of the examination will be mailed at least 10 days prior to the date set for the examination to each candidate whose application to sit for the examination has been approved by the board. For the computer based CPA examination, notification will be mailed to the applicant and the exam deliverer within 10 days from approval and qualification of the applicant to sit for the exam.

B. Examination subjects: The examination required by the Act shall include the subject areas of accounting and auditing and such related subjects as the board may require.

[16.60.2.10 NMAC - Rp 16 NMAC 60.3.9.3, 02-14-2002]

16.60.2.11 PROCTORED EXAMINATION CANDIDATES (OUT-OF-STATE CANDIDATES)

A. The board will accept candidates from other jurisdictions/states as out-of state proctored candidates, or allow qualified New Mexico candidates to be proctored in other jurisdictions/states, only under the following situations:

(1) Temporary change in residence to the proctoring jurisdiction/state while the candidate is a student;

(2) Temporary change in residence to the proctoring jurisdiction/state while the candidate is on military duty;

(3) Temporary change in residence to the proctoring jurisdiction/state while the candidate is on a temporary work assignment; or

(4) Qualified New Mexico candidates who can demonstrate significantly reduced travel expense by being proctored in a contiguous jurisdiction/state.

B. The board may waive the above requirements due to hardship exceptions presented by a CPA examination candidate.

[16.60.2.11 NMAC - N, 002-14-2002]

16.60.2.12 CPA EXAMINATION CHEATING:

A. Cheating by an applicant in applying for or taking the examination will be deemed to invalidate any grade otherwise earned by a candidate on any part of the examination and may warrant summary expulsion from the examination and disqualification from taking the examination for a specified number of subsequent sittings.

(1) For purposes of this rule, the following actions, among others, may be considered cheating:

(a) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(b) Communication between candidates inside or outside the examination room or copying another candidate's answers while the examination is in progress;

(c) Communication with others outside the examination room while the examination is in progress;

(d) Substitution of another person to sit in the examination room in the stead of a candidate and write one or more of the examination papers; or

(e) Reference to crib sheets, textbooks or other material inside or outside the examination room while the examination is in progress.

(2) In any case where it appears to a member of the board or its representative, while the examination is in progress, that cheating has or is occurring, the board may either summarily expel the candidate involved from the examination or move the

candidate to a position in the room away from other candidates where the candidate can be watched more closely,

(3) In any case where the board believes that it has evidence that a candidate has cheated on the examination, and in every case where a candidate has been expelled from the examination, the board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and, if so, what remedy should be applied. In such hearings, the board shall decide:

(a) whether the candidate shall be given credit for any portion of the examination completed in that session;

(b) whether the candidate shall be allowed to continue taking the examination in any additional sessions that remain; and

(c) whether the candidate shall be barred from taking the examination in future sittings, and if so, for how many sittings.

(4) In any case where the board permits a candidate to continue taking the examination, it may, depending on the circumstances:

(a) admonish the candidate;

(b) seat the candidate in a segregated location for the rest of the examination;

(c) keep a record of the candidate's seat location and identification number and the names and identification numbers of the candidates on either side of the candidate; and

(d) notify the American Institute of Certified Public Accountants (AICPA) of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved.

(5) In any case where a candidate is refused credit for parts of the examination taken or is expelled from the examination or disqualified from taking other parts, the board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the board, with right of appeal, pursuant to the procedures provided in the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, and in Section 7B of the Act, and after July 1, 2004, Section 8B of the Act.

(6) In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the board will provide information as to its

findings and actions taken to the board of accountancy of any other state to which the candidate may apply for the examination.

[16.60.2.12 NMAC – Rp 16 NMAC 60.3.9, 02-14-2002]

HISTORY OF 16.60.2 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the Commission of Public Records–State Records Center and Archives; BPA Policy Statement 84-1, Cheating, filed 06-27-84.

BPA Policy Statement 84-2, Answers to Ethics Examination Questions, filed 06-27-84.

BPA Policy Statement 84-3, Exam ID Card, filed 06-27-84.

BPA Policy Statement 84-4, Questionnaire, filed 06-27-84.

BPA Policy Statement 84-5, Exam Photos, filed 06-27-84.

BPA Policy Statement 84-6, Meeting the Education Requirement, filed 08-27-84.

BPA Policy Statement 84-8, Transfer of Conditional Credit and Eligibility to Sit for Future Examinations, filed 08-27-84.

BPA 84-2, Purpose, Filed 07-09-84 Section 10, Examination of Applicants, filed 11-13-92

BPA 95-10, Certified Public Accountants, filed 04-21-95

History of Repealed Material:

16 NMAC 60.3, Public Accountants – CPA Examination; Educational Requirements and General Information, filed 09-27-95, repealed effective 02-14-2002.

Other History:

16 NMAC 60.3, Public Accountants – CPA Examination; Educational Requirements and General Information, filed 09-27-95 replaced by 16.60.2 NMAC, Certified Public Accountant (CPA) Examination Requirements, effective 02-14-2002.

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 60 CERTIFIED PUBLIC ACCOUNTANTS PART 3 LICENSURE AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

16.60.3.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board

[16.60.3.1 NMAC – Rp 16 NMAC 60.4.1 & 16 NMAC 60.6.1, 02-14-2002]

16.60.3.2 SCOPE: General public: Individuals seeking to become certified

public accountants (CPAs) CPAs and registered public accountants (RPAs) seeking to maintain their New Mexico certificate/license status through continuing professional education (CPE).

[16.60.3.2 NMAC – Rp 16 NMAC 60.4.2 & 16 NMAC 60.6.2, 02-14-2002]

16.60.3.3 STATUTORY AUTHORITY: 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978

[16.60.3.3 NMAC – Rp 16 NMAC 60.4.3 & 16 NMAC 60.6.3, 02-14-2002]

16.60.3.4 DURATION: Permanent.

[16.60.3.4 NMAC – Rp 16 NMAC 60.4.4 & 16 NMAC 60.6.4, 02-14-2002]

16.60.3.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.3.5 NMAC – Rp 16 NMAC 60.4.5 & 16 NMAC 60.6.5, 02-14-2002]

16.60.3.6 OBJECTIVE: Protect the public interest by implementing provisions of the 1999 Public Accountancy Act (Act) which provide for initial application issuance and renewal of CPA and RPA certificates/licenses; reinstatement of expired, cancelled, suspended or revoked CPA/RPA certificates; application and issuance of CPA certificates through interstate and international reciprocity; establishment of intent to practice privilege under substantial equivalency; maintenance of professional competency through continuing professional education (CPE) of CPA and RPA certificate/license holders; and change of status application procedures between active/inactive or retired status.

[16.60.3.6 NMAC – Rp 16 NMAC 60.4.6 & 16 NMAC 60.6.6, 02-14-2002]

16.60.3.7 DEFINITIONS: [RESERVED]

[16.60.3.7 NMAC – Rp 16 NMAC 60.4.7 & 16 NMAC 60.6.7, 02-14-2002]

16.60.3.8 APPLICATION REQUIREMENTS: All certificate/license applications and renewals shall be made on and meet all information requirements contained in board prescribed forms. Applications will not be considered complete and filed with the board until all required information and board prescribed fees have been received.

[16.60.3.8 NMAC – Rp. 16 NMAC 60.4.8.1, 02-14-2002]

16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:
A. An applicant for initial

certification/licensure shall demonstrate to the board's satisfaction that he:

(1) Is of good moral character and lacks a history of dishonest or felonious acts;

(2) Meets the education, experience and examination requirements of the board; and

(3) Provides evidence of successful completion of an ethics examination prescribed by the board.

B. Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts.

C. Education and examination requirements: Education and examination requirements are specified in the Act, Section 61-28B7 and Section 61-28B8 (After July 1, 2004) and are further delineated in Part 3 of board rules.

D. Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the Act, and after July 1, 2004 Section 8H of the Act shall:

(1) Provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills. Acceptable experience shall include experience gained through employment in industry, government, academia or public practice.

(2) Have their experience verified and demonstrate that all experience was obtained under the direct supervision of an active, licensed CPA as defined in the Act or under the direct supervision of an active, licensed CPA from another state. The board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted.

(a) One year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above.

(b) Experience documented in support of an initial application must be obtained within the 7 years immediately preceding passing of the examination or within 7 years of having passed the examination upon which the application is based.

(c) Any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal. The board may require any licensee who has furnished evidence of an appli-

cant's experience to substantiate the information.

(d) The board may inspect documentation relating to an applicant's claimed experience. Any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

E. Replacement certificates: Replacement certificates may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than 1 New Mexico certificate as a CPA or RPA. When a replacement certificate is requested, the certificate/license holder must return the original certificate or submit a sworn affidavit describing the occurrence that necessitated the replacement certificate.

F. Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the month prior to the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the Act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC – Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002]

16.60.3.10 BOARD ACCEPTANCE OF GRADE TRANSFER CERTIFICATE APPLICANTS:

A. The board will only accept grade transfers from applicants passing the uniform CPA examination in other jurisdictions/states for an initial CPA certificate application under the following situations:

(1) Temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the grade transfer applicant was a student;

(2) Temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the grade transfer applicant was on military duty;

(3) Temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the candidate was on a temporary work assignment;

(4) Presentation of documented evidence demonstrating current resident status in the State of New Mexico; or

(5) Presentation of documented evidence demonstrating anticipated employment and residency in the State of New Mexico within 6 months of the application's date.

B. The board may waive the above requirements due to hardship exceptions presented by a grade transfer certificate applicant.

[16.60.3.10 NMAC – N, 02-14-2002]

16.60.3.11 RELINQUISHING A CERTIFICATE/LICENSE:

A. Any individual certificate/license holder may at any time and for any reason, subject to the approval of the board, relinquish that certificate/license to the board. An individual relinquishing his certificate/license during the course of a disciplinary investigation or proceeding may not apply for reinstatement but may apply for the issuance of a new certificate/license upon completion of all requirements for the issuance of such certificate, including meeting all education, examination, experience, and ethics examination requirements of the Act and board rules in effect at the time of the new application. This includes sitting for and passing the uniform CPA examination, meeting current experience requirements, and passing a current ethics examination.

B. This rule does not apply to a licensee who relinquished their license while in good standing and was not the subject of a board investigation or disciplinary proceeding at the time they relinquished their license. If an individual relinquishes their certificate/license during the course of a board disciplinary investigation or proceeding, this fact shall be disclosed in any later application for a new certificate and shall be considered before the issuance of a new certificate.

[16.60.3.11 NMAC – N, 02-14-2002]

16.60.3.12 REINSTATEMENT REQUIREMENTS:

A. Requests to reinstate a certificate/license that lapsed or expired as a result of non-renewal shall meet all board prescribed requirements for reinstatement including past renewal fees, delinquency

fees, and continuing professional education. An individual whose certificate/license has been subject to board disciplinary action pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, may, upon application in writing and for good cause, request reinstatement of the certificate/license after completion of all requirements contained in the board's original order or agreement.

B. A reinstatement application pursuant to Section 21 of the Act and this rule will be processed by the board upon the basis of the materials submitted in support thereof and supplemented by such additional inquiries as the board may require. For reinstatement of a certificate/license, a hearing may be held, and the board may, at its discretion, impose terms and conditions on an application following procedures the board may find suitable for the particular case.

C. The reinstatement request shall set out in writing the reasons constituting good cause for the relief sought and shall be accompanied by at least 2 supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since board disciplinary action was imposed. In considering a reinstatement application, the board may consider all activities of the applicant since the disciplinary action from which relief is sought was imposed; the offense for which the applicant was disciplined; the applicant's activities during the time the certificate/license was in good standing; the applicant's rehabilitative efforts; restitution to damaged parties in the matter for which the penalty was imposed; and the applicant's general reputation for trust and professional probity.

D. No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court-imposed probation or parole.

[16.60.3.12 NMAC – Rp 16 NMAC 60.4.11, 02-14-2002]

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 3Q, 11B and D, and 26A of the Act provided 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) Has satisfied the education requirements set out in Sections 7C and 8C of the Act; and

(4) Meets the experience requirements under the Act and these rules for issuance of the initial certificate; and

(5) Has met the CPE requirement pursuant to the Act and board rules; and

(6) Has met the ethics examination requirements of the board.

B. 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.

C. 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.

D. 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 credentialing body against the CPA's foreign country credential.

E. 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.

F. 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.

G. Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely upon the CPA's fitness to retain a certificate/license and is a basis for board action.

H. 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]

16.60.3.14 SUBSTANTIAL EQUIVALENCY/INTENT TO PRACTICE REQUIREMENTS: Pursuant to Section 26 of the Act, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from a state that the board-approved qualification service has verified to be in substantial equivalency with the certified public accountant requirements of the Act shall be presumed to have qualifications substantially equivalent to New Mexico's requirements.

A. The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.

B. A person whose qualifications are deemed substantially equivalent may apply for and obtain intent to practice privileges. Application shall be made on board-prescribed forms and include related fees. The board may grant practice privileges in New Mexico under substantial equivalency provisions for a period not to exceed 1 year. Upon approval, a person afforded the privilege of practicing in New Mexico under substantial equivalency provisions shall, as a condition of the granting of this privilege:

(1) Provide written notice to the board in advance of any practice of public accountancy within New Mexico each time the person intends to enter the state to practice;

(2) Consent to personal and subject matter jurisdiction of the board;

(3) Agree to full compliance with the Act and related board rules; and

(4) Consent to appointment of the state board of the state of their principal place of business as their agent, upon whom process may be served in an action or proceeding by the New Mexico Public Accountancy Board against it.

C. Individuals may re-apply for practice privileges under this provision at the end of each approved practice period. However, persons practicing in New Mexico under substantial equivalency provisions for a period of greater than 60 days within a 1 calendar year period shall not be permitted to re-apply for intent to practice under substantial equivalency provisions.

D. Individuals exceeding 60 days practice within a 1 calendar year period under substantial equivalency/intent to practice provisions shall be required to apply for and obtain a New Mexico certificate/license under reciprocity requirements and apply for and obtain a New Mexico

firm permit as prescribed in board rules. [16.60.3.14 NMAC – N, 02-14-2002]

16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:

A. The following requirements of continuing professional education apply to certificate/license renewals, reinstatement, reciprocity, and substantial equivalency applications pursuant to Sections 9E and 12A of the Act. An applicant for certificate/license renewal, reinstatement, reciprocity, and substantial equivalency shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 3-calendar-year period preceding the first day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the 3 calendar years preceding the first day of the certificate/license holder's CPA birth month, with a minimum of 20 hours completed in each year. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the month prior to the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be postmarked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(6) Applications will not be considered complete without satisfactory evi-

dence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the Act and of these rules.

(7) Reinstatement applicants whose certificates/licenses have lapsed and applicants by reciprocity shall provide documented evidence of completion of 120 hours of CPE according to this rule before their application will be considered complete.

B. Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status:

(1) Pursuant to Section 9E of the Act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the Act; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) provide documented evidence of compliance with all CPE requirements of this rule prior to request for certificate/license change of status to "active"; and

(b) complete board-prescribed change-of-status forms and remit related fees.

C. Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

(1) A non-resident licensee seeking renewal of a certificate in this state shall be determined to have met the CPE requirement of this rule by meeting the CPE requirements for renewal of a certificate in the state in which the licensee's principal office is located.

(2) Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state

in which the licensee's principal office is located by signing a statement to that effect on the renewal application of this state. However, if a the state in which the non-resident licensee's principal office is located has no CPE requirements for renewal of a certificate, the non-resident licensee must comply with all CPE requirements for renewal of a certificate of the State of New Mexico, according to this rule.

D. Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the Act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the Statement on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit

for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses – each class hour shall equal 1 hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

(a) firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(b) firms having a system peer review will be allowed up to 24 hours of CPE credits.

(f) firms having a system peer review at a location other than the firm's office shall be considered an off-site peer

review and will be allowed up to 12 hours of CPE credits.

(g) the firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(14) For each 3-year reporting period, at least 24 of the hours reported shall be taken outside of the individual's firm, agency, company, organization or normal work setting in a public presentation environment, which is defined as a group program, classroom, live instructor setting in which at least 10 percent of the registered participants are not members, associates, clients, or employees of the firm, agency, company, organization or normal work environment.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

E. Programs not qualifying for CPE:

(1) CPA examination review or "cram" courses;

(2) Industrial development, community enhancement, political study groups or similar courses, programs or seminars;

(3) Courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) Partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

F. Continuing professional education records requirements: When

applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation and/or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(7) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards

may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC – Rp 16 NMAC 60.6.6, 02-14-2002]

HISTORY OF 16.60.3 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the Commission on Public Records-State Records Center and Archives;

BPA 84-2, Purpose, filed 07-09-84.

BPA Policy Statement 86-1, Interpreting Rule 607-I-B(5), filed 02-10-86.

BPA Policy Statement 86-1, Amendment No. 1, Interpreting Rule 607-I-B(5), filed 03-10-86

Section 14, Continuing Professional Education, filed 11-13-92

BPA 95-12, Certification; Renewal, filed 04-21-95.

BPA 95-13, Certification by Reciprocity, filed 04-21-95.

BPA 95-14, Permits, Individuals, filed 04-21-95.

BPA 95-19, Business Names; Prohibitions, filed 04-21-95.

BPA 95-21, Reinstatement, filed 04-21-95.

History of Repealed Material:

16 NMAC 60.4, Public Accountants – Certification; Experience Requirements and Procedures, filed 09-27-95 and 16 NMAC 60.6, Public Accountants – Continuing Professional Education, filed 09-27-95, repealed effective 02-14-2002.

Other History:

16 NMAC 60.4, Public Accountants – Certification; Experience Requirements and Procedures, filed 09-27-95 and 16 NMAC 60.6, Public Accountants – Continuing Professional Education, filed 09-27-95 replaced by 16.60.3 NMAC, Licensure and Continuing Professional Education Requirements effective 02-14-2002.

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 60 PUBLIC ACCOUNTANTS

PART 4 FIRM PERMIT, PEER REVIEW REQUIREMENTS, AND BUSINESS NAME PROHIBITIONS

16.60.4.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.

[16.60.4.1 NMAC – Rp 16 NMAC 60.11.1, 02-14-2002]

16.60.4.2 SCOPE: General Public - All certified public accountant (CPA) and registered public accountant (RPA) business entities seeking authority to practice as a CPA or RPA firm.

[16.60.4.2 NMAC – Rp 16 NMAC 60.11.2, 02-14-2002]

16.60.4.3 STATUTORY AUTHORITY: 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.4.3 NMAC – Rp 16 NMAC 60.11.3, 02-14-2002]

16.60.4.4 DURATION: Permanent.

[16.60.4.4 NMAC – Rp 16 NMAC 60.11.4, 02-14-2002]

16.60.4.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.4.5 NMAC – Rp 16 NMAC 60.11.5, 02-14-2002]

16.60.4.6 OBJECTIVE: To prescribe requirements for firm permit application, renewal and reinstatement, business name prohibitions and peer review program implementation, administration and oversight.

[16.60.4.6 NMAC – Rp 16 NMAC 60.11.6, 02-14-2002]

16.60.4.7 DEFINITIONS: [RESERVED]

[16.60.4.7 NMAC – Rp 16 NMAC 60.11.7, 02-14-2002]

16.60.4.8 FIRM PERMIT APPLICATION, RENEWAL, REINSTATEMENT AND NOTIFICATION REQUIREMENTS:

A. Pursuant to Sections 12B and 13A, B, C, and I of the Act, any CPA or RPA acting as the sole proprietor, partner, shareholder or member of a legal business entity who performs or offers to perform accountancy for a client or potential client by holding themselves out to the public must obtain a firm permit to be granted authority to practice public accountancy as a CPA or RPA firm. All firm permit applications for initial issue, renewal, or reinstatement shall be made on board-prescribed forms and meet all information and fee requirements to be considered complete and filed with the board.

B. Renewal requirements: Deadline for receipt of firm permit renewal applications is no later than 30 calendar days prior to the expiration date printed on

the firm permit. Renewal applications shall be postmarked or hand-delivered no later than the last day of the month preceding the month of expiration or the next business day if the deadline falls on a weekend or holiday. The board shall mail firm permit renewal application forms to firm permit holders no less than 30 days prior to the renewal deadline date.

C. Reinstatement requirements:

(1) Reinstatement due to non-renewal/expiration: Requests to reinstate a firm permit that lapsed or expired as a result of non-renewal shall be made on board-prescribed forms and meet all board-prescribed requirements for reinstatement including past renewal fees, delinquency fees, and peer review program requirements. This rule shall not apply to firms whose permits lapsed or expired for a period of 3 years or more.

(2) Reinstatement applications for relief from disciplinary penalties: A firm whose permit to practice has been subject to board disciplinary action may apply to the board for modification of the board action after completion of all requirements contained in the board's original order.

(a) the application shall be in writing and substantiate the reasons constituting good cause for the relief sought; and

(b) shall be accompanied by at least 2 supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since the board action was imposed.

D. Action by the board: An application pursuant to Section 21 of the Act will be processed by the board upon the basis of the application materials submitted, supplemented by such additional inquiries the board may require. At the board's discretion, a hearing may be held on an application following procedures the board may find suitable for the particular case.

(1) The board may impose appropriate terms and conditions for firm permit reinstatement or modification of board disciplinary action.

(2) In considering a reinstatement application, the board may consider:

(a) all activities of the applicant since the disciplinary penalty from which relief is sought was imposed;

(b) the offense for which the applicant was disciplined;

(c) the applicant's activities during the time the firm permit was in good standing;

(d) the applicant's rehabilitative efforts;

(e) restitution to damaged parties in the matter for which the penalty was imposed; and

(f) the applicant's general reputa-

tion for trust and professional probity.

(3) No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.

E. Notification requirements: A firm registered pursuant to Section 13 of the Act shall file written notification with the board of any of the following events concerning the practice of public accountancy within this state within 30 days of occurrence:

(1) Formation of a new firm;

(2) Change in legal form or name of a firm;

(3) Firm termination;

(4) Establishment of a new branch office or the closing or change of address of a branch office in this state; or

(5) The occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the Act or these rules.

[16.60.4.8 NMAC – Rp 16 NMAC 60.4.11, 02-14-2002]

16.60.4.9 FIRM BUSINESS NAMES PROHIBITIONS:

A. Misleading firm names: A firm name is misleading pursuant to Section 19 of the Act if, among other things, the firm name:

(1) Is not the lawful and registered name of the firm.

(2) Contains a misrepresentation of the facts.

(3) Indicates a character, quality or grade of service which is not based upon verifiable facts.

(4) Indicates a geographic area of service which is not based on verifiable facts.

(5) Is intended to or likely to create false or unjustified expectations of favorable results.

(6) Implies special expertise.

(7) Includes a non-owner firm employee or a non-CPA.

(8) Implies the existence of a corporation when the firm is not a corporation.

(9) Implies existence of a partnership when there is not a partnership (as in "Smith & Jones, CPA's").

(10) Includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm.

However, names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to 2 years after becoming a sole practitioner.

B. Fictitious firm names:

A fictitious CPA or RPA firm name (that is, one not consisting of the names of 1 or more present or former partners, members, or shareholders) may not be used by a CPA or RPA firm in the practice of public accountancy unless such name has been registered with and approved by the board as not being false or misleading.

C. Name of firm formed as a single member limited liability company (LLC): A firm which is organized as a single member LLC under the Limited Liability Company Act, Sections 53-19-1 to 53-19-74 NMSA 1978, or similar acts of other states may be required by the applicable LLC act to include the word "company" or "Co." in its name. For purposes of compliance with the act, the firm name shall not include more than one person's name and shall not include "and", "&" or a similar term with respect to "company" or "Co." in a manner which would imply that there was more than 1 owner of the firm.

[16.60.4.9 NMAC – Rp 16 NMAC 60.4.10, 02-14-2002]

16.60.4.10 PEER REVIEW REQUIREMENTS:

A. Participation: A firm seeking to obtain or renew a firm permit to engage in the practice of public accountancy in New Mexico must undergo a peer review at least once every 3 years beginning with initial firm permit application. Peer review program objectives are established pursuant to Section 13I of the Act to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. Emphasis is on education, including appropriate education programs or remedial procedures that may be recommended or required where reporting does not comply with appropriate professional standards.

(1) Firms contracting to perform audits of state agencies as defined in the Audit Act must also comply with peer review standards applicable to those audits.

(2) Participation is required of each firm registered with the board who performs accounting and auditing engagements, including but not limited to audits, reviews, compilations, attestations, forecasts, or projections.

B. Reporting to the Board: At the time of annual firm permit renewal, firms must submit a copy of the acceptance letter from the administering entity.

(1) If at the time of firm permit renewal the firm cannot provide the final acceptance letter, the firm must submit a letter to the board with the permit renewal application explaining failure to comply. The board may take disciplinary action for failure to comply.

(2) Each holder of a board-issued firm permit shall schedule a review to commence no later than the end of their first year of operations. Firms applying for their initial permit with a current (within the 3 years preceding initial application) peer review acceptance letter may submit that year's acceptance letter in support of their initial application and shall then schedule and maintain a subsequent review for each successive 3-year review period thereafter.

(3) Upon completion of the scheduled peer review, each firm shall schedule and maintain subsequent reviews for each successive 3-year period thereafter. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable completion and acceptance of the review within the requirement of each successive 3-year reporting period.

C. Peer review program standards:

(1) The board adopts the Standards for Performing and Reporting on Peer Reviews or any successor standards for peer review promulgated by the American Institute of Certified Public Accountants (AICPA) as its minimum standards for review of practice firms. This shall not require a membership in any specific administering entity or the AICPA.

(2) Approved administering entities shall be AICPA, the National Society of Accountants (NSA) and state CPA societies fully involved in the administration of the AICPA peer review program and such other entities which register with and are approved by the board on their adherence to the peer review minimum standards.

(3) The board may, for cause, revoke approval of an administering entity. [16.60.4.10 NMAC – Rp 16 NMAC 60.11.8 & 16 NMAC 60.11.9, 02-14-2002]

16.60.4.11 FIRM MERGERS, COMBINATIONS, DISSOLUTIONS, SEPARATIONS, OR PERMIT EXPIRATION/REQUEST FOR REINSTATEMENT:

A. In the event of a firm merger, combination, dissolution or separation, the firms must notify the board of changes in quality review cycles.

(1) In the event that 2 or more firms are merged or sold and combined, the surviving firm shall retain the peer review year of the largest (based on accounting and auditing hours) firm.

(2) In the event that a firm is divided, the firm(s) shall retain the review year of the former practice unit. In the event that such review is due in less than 12 months, a review year shall be assigned so that the review occurs within 18 months of the commencement of the new firm(s).

(3) In the event that a firm's per-

mit expires/lapses due to non-renewal, the firm shall retain the year of the previously established firm peer review reporting completion dates. Peer review completion with a supporting acceptance letter shall be required to support any reinstatement application request.

(4) The firm must notify the board within 20 days of an extension, approved by the administering entity, as a result of a merger, combination, dissolution, or separation. Extension may not exceed 180 days.

B. Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than 6 months prior to expected completion date of the peer review.

C. Exemptions: A firm which does not perform accounting and/or auditing engagements, including but not limited to audits, reviews, compilations, attestations, forecasts, or projections is exempt from the peer review program and shall re-certify annually to the board as to this exempt status as part of the firm permit renewal process. A previously exempt firm which begins providing the above described services must initiate and complete a review within 18 months of the date the services were first provided.

D. Procedures for an administering entity:

(1) To qualify as an administering entity, an organization must submit a peer review administration plan to the board for review and approval. The plan of administration must:

(a) establish a peer review committee (PRC) and subcommittees as needed, and provide professional staff as needed for the operation of the peer review programs;

(b) establish a program to communicate to firms participating in the peer review program the latest developments in peer review standards and the most common findings in the peer reviews conducted by the administering entity;

(c) establish procedures for resolving any disagreement which may arise out of the performance of a peer review;

(d) establish procedures to evaluate and document the performance of each reviewer and conduct hearings which may lead to the disqualification of a reviewer who does not meet the AICPA standards; and

(e) require the maintenance of records of peer reviews conducted under the program in accordance with the records retention rules of the AICPA.

(2) A peer review committee (PRC) is comprised exclusively of CPAs

practicing public accountancy and formed by an administering entity for the purpose of accepting peer review reports submitted by firms on peer review engagements.

(3) Each member of a PRC must be active in the practice of public accountancy at a supervisory level in the accounting or auditing function while serving on the committee. The member's firm must be enrolled in an approved practice-monitoring program and have received an unmodified report on its most recent peer review. A majority of the committee members must satisfy the qualifications required of on-site peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.

(4) The PRC members' terms shall be staggered to provide for continuity.

(5) A PRC member may not concurrently serve as a member of his state's board of accountancy.

(6) A PRC member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence of or has a conflict of interest with the firm.

(7) A PRC decision to accept a report must be made by a majority of a quorum of members.

(8) Responsibilities of peer review committee. The PRC shall:

(a) establish and administer the administering entities' peer review program in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(b) when necessary in reviewing reports on peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures;

(c) monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(d) resolve instances in which there is a lack of cooperation and disagreement between the committee and review teams or reviewed firms in accordance with the administering entities adjudication process;

(e) promptly act upon requests from firms for changes in the timetable of their review;

(f) appoint members to subcommittees and task forces as necessary to carry out its functions;

(g) establish and perform procedures for insuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(h) establish a report acceptance process which facilitates the exchange of viewpoints among committee members; and

(i) provide to the board administrative statistical reports regarding their peer review program as requested.

E. Disciplinary Action:

(1) The board shall take disciplinary action against a firm for failure to comply with peer review requirements. Actions may include, but are not limited to, remedial and corrective procedures, fines, and denial of firm registration.

(2) In the event a firm is unwilling or unable to comply with established standards, or a firm's professional work is so egregious as to warrant disciplinary action, the board shall take appropriate action to protect the public interest.

F. Privileged information:

A report, statement, memorandum, transcript, funding record, or working paper prepared for and an opinion formulated in connection with any positive enforcement or peer review is privileged information held by the administering entity and may not be subject to discovery, subpoena, or other means of legal compulsion for release to any person and is not admissible as evidence in any judicial or administrative proceeding except for a board hearing.

G. Peer review continuing professional education (CPE) credit:

The board will allow a firm up to a total of 24 hours of CPE credits for its CPAs. These hours shall be allocated by the firm to participating firm CPAs and must be used in the calendar year of the acceptance letter.

(1) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(2) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(3) Firms having a system peer review at a location other than the firm's office shall be considered a system peer review and will be allowed up to 12 hours of CPE credits.

(4) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary. [16.60.4.11 NMAC – Rp 16 NMAC 60.4.10 through 60.4.16, 02-14-2002]

HISTORY OF 16.60.4 NMAC: History of Repealed Material:

16 NMAC 60.4, Public Accountants - Certification; Experience Requirements and Procedures, filed 09-27-95 and 16 NMAC 60.11, Public Accountants - Peer Review Requirements, filed 02-27-98, repealed effective 02-14-2002.

Other History:

16 NMAC 60.4, Public Accountants – Certification; Experience Requirements and Procedures, filed 09-27-95 and 16 NMAC 60.11, Public Accountants – Peer Review Requirements, replaced by 16.60.4 NMAC, Firm Permit, Peer Review Requirements, and Business Name Prohibitions, effective 02-14-2002.

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 60 PUBLIC ACCOUNTANTS
PART 5 CODE OF PROFESSIONAL CONDUCT**

16.60.5.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.

[16.60.5.1 NMAC – Rp 16 NMAC 60.7.1, 02-14-2002]

16.60.5.2 SCOPE: This part applies to the code of professional conduct as promulgated under the authority granted by applicable New Mexico statutes, which delegates to the State of New Mexico Public Accountancy Board the power and duty to prescribe rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accountancy.

[16.60.5.2 NMAC – Rp 16 NMAC 60.7.2, 02-14-2002]

16.60.5.3 STATUTORY AUTHORITY: Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.5.3 NMAC – Rp 16 NMAC 60.7.3, 02-14-2002]

16.60.5.4 DURATION: Permanent.

[16.60.5.4 NMAC – Rp 16 NMAC 60.7.4, 02-14-02]

16.60.5.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.5.5 NMAC – Rp 16 NMAC 60.7.5, 02-14-2002]

16.60.5.6 OBJECTIVE: The code of professional conduct prescribes the obligation that persons engaged in the practice of public accountancy have to their clients and to the public to maintain independence of thought and action; to strive continuously to improve one's thought and action; to strive continuously to improve

one's professional skills; to observe, where applicable, generally accepted accounting principles and generally accepted auditing standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; to uphold the standards of the public accountancy profession; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

[16.60.5.6 NMAC – Rp 16 NMAC 60.7.6, 2-14-2002]

16.60.5.7 DEFINITIONS: [RESERVED]

[16.60.5.7 NMAC – Rp 16NMAC 60.7.7, 02-14-2002]

16.60.5.8 DUTY TO ABIDE BY CODE OF PROFESSIONAL CONDUCT:

A. In addition to its own rules of conduct, the Board adopts the American Institute of Certified Public Accountants' (AICPA) Professional Standards: Code of Professional Conduct. All certified public accountants and registered public accountants holding a current certificate and all holders of firm permits shall comply with the board's rules of conduct and the AICPA Code of Professional Conduct or any successor code of professional conduct promulgated by AICPA in meeting and maintaining their responsibilities and requirements of ethical and professional conduct in the practice of public accountancy. This Code of Professional Conduct is on file and available for review at the offices of the board and is available from AICPA.

B. By accepting licensure to engage in the practice of public accountancy or to use titles which imply a particular competence so to engage, the licensee also accepts the obligations of the profession and the duty to abide by the board's rules of conduct and the AICPA Code of Professional Conduct.

C. Any departure from either the rules of conduct or the code of conduct must be justified, and individuals who do not adhere to them may be subject to board disciplinary action.

[16.60.5.8 NMAC – Rp 16 NMAC 60.7.6, 02-14-2002]

16.60.5.9 BOARD DISCIPLINARY ACTION:

A. Any licensee whose certificate or firm permit issued by the board is subsequently suspended or revoked shall promptly return such certificate/license to be board.

B. Decisions by the board following hearings under the Uniform Licensing Act and the Public Accountancy

Act will, if a charge is sustained, be made public. Decisions that do not sustain a charge or are subject to agreement in lieu of a hearing may be made public at the board's discretion.

[16.60.5.9 NMAC – N, 02-14-2002]

16.60.5.10 BOARD AUTHORITY TO REVIEW DOCUMENTS:

The board may solicit and receive publicly available reports and related financial statements from clients, public agencies, banks, and other users of financial statements of certificate holders/licensees and firm-permit holders and individuals with privileges under the act on a general and random basis without regard to whether an application for renewal of the particular licensee is then pending or whether there is any formal complaint or suspicion of impropriety on the part of any particular licensee or individual. The board may review such reports and otherwise proceed with respect to the results of any such review under provisions, authorities, and remedies of the act.

[16.60.5.10 NMAC – N, 02-14-2002]

16.60.5.11 RULES OF CONDUCT:

In addition to abiding by the AICPA Code of Professional Conduct, New Mexico CPA/RPA certificate/license holders shall abide by the following board rules:

A. Rule 901 – Responses to board communications. An individual certificate/license or firm permit holder shall, when requested, substantively respond in writing to any communications from the board requesting a response within 30 days of the mailing of such communications by registered or certified mail to the last address furnished the board by the applicant, certificate or registration holder.

(1) Failure to respond substantively to written board communications or failure to furnish requested documentation and/or working papers constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(2) Each applicant, certificate or firm permit holder and each person required to be registered with the board under the act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

B. Rule 902 - Reportable events. A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:

(1) Conviction or imposition of deferred adjudication of the licensee of any of the following: felony or any crime of which fraud or dishonesty is an element; and any crime related to the qualifications, functions, or duties of a RPA or CPA or to

acts or activities in the course and scope of the practice of public accountancy or as a fiduciary.

(2) The cancellation, revocation, or suspension of a certificate; other authority to practice or refusal to renew a certificate or other authority to practice as a RPA or CPA by any state, foreign country or other jurisdiction; or

(3) The cancellation revocation or suspension of the right to practice as a CPA or RPA before any governmental body, agency or other licensing agency.

The required report shall be signed by the licensee and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event. As used in this rule, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not actually imposed until all appeals are exhausted. Nothing in this rule imposes a duty upon any licensee to report to the Board the occurrence of any events set forth either by or against any other licensee.

C. Rule 903 – Frivolous complaints. An individual certificate/license or firm permit holder who, in writing to the board, accuses another certificate/license or firm permit holder of violating the act or board rules shall assist the board in any investigation and/or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule.

D. Rule 904 – Compliance with the Parental Responsibility Act. If an applicant for a certificate/license or a CPA or RPA certificate/license or firm permit holder is identified by the State of New Mexico Human Services Department (HSD) as not in compliance with a judgment and order for support, the board shall: deny an application for a license; deny the renewal of a license; have grounds for suspension or revocation of a license; and shall initiate a notice of contemplated action under provisions of the Uniform Licensing Act.

(1) If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD Child Support Enforcement Division. An applicant or licensee can provide the board with a subsequent statement of compliance, which shall preclude the board

from taking any action based solely on the prior statement of non-compliance from HSD.

(2) When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

E. Rule 905 – Specialty designations. A CPA/RPA certificate/license holder may only represent a claim of special expertise through the use of "specialty designations" in conjunction with the CPA/RPA designation if the specialty designation is:

(1) consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience, or examination, and

(2) cannot be construed by the public or clients of the CPA/RPA practitioner to be a false fraudulent, misleading, or deceptive claim unsubstantiated by fact.

[16.60.5.11 – Rp 16 NMAC 60.7, 16 NMAC 60.9, and 16 NMAC 60.10, 02-14-2002]

HISTORY OF 16.60.5 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives; BPA 84-1, Code of Professional Conduct, filed 07-09-84.

BPA 95-1, Board; Powers and Duties, filed 04-21-95.

History of Repealed Material:

16 NMAC 60.7, Code of Professional Conduct, filed 09-27-95; 16 NMAC 60.9, Specialty Designations, filed 09-27-95; and 16 NMAC 60.10, Parental Responsibility Act, filed 09-27-95, repealed effective 02-14-2002.

Other History:

16 NMAC 60.7, Code of Professional Conduct, filed 09-27-95; 16 NMAC 60.9, Specialty Designations, filed 09-27-95; and 16 NMAC 60.10, Parental Responsibility Act, filed 09-27-95, replaced by 16.60.5 NMAC, Code of Professional Conduct effective 02-14-2002.

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

**TITLE 8 SOCIAL SERVICES
CHAPTER 8 CHILDREN, YOUTH
AND FAMILIES GENERAL PROVI-
SIONS
PART 4 ADMINISTRATIVE
APPEALS**

8.8.4.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.8.4.1 NMAC - N, 2/15/2002]

8.8.4.2 SCOPE: Department staff and the general public.
[8.8.4.2 NMAC - N, 2/15/2002]

8.8.4.3 STATUTORY AUTHORITY: Section 9-2A-7(D) NMSA 1978 provides that the secretary may make and adopt such reasonable procedural rules and regulations as may be necessary to carry out the duties of the Department and its divisions.
[8.8.4.3 NMAC - N, 2/15/2002]

8.8.4.4 DURATION: Permanent.
[8.8.4.4 NMAC - N, 2/15/2002]

8.8.4.5 EFFECTIVE DATE: February 15, 2002.
[8.8.4.5 NMAC - N, 2/15/2002]

8.8.4.6 OBJECTIVE: The objective of this rule is to implement the Department's policy on administrative appeals hearings consistent with federal and state constitutions and laws.
[8.8.4.6 NMAC - N, 2/15/2002]

8.8.4.7 DEFINITIONS:

A. "Administrative Hearing" means the process to address appeals, protests, and disputes dealing with licensing, certification, procurement, contracts, termination or modification of existing services, or any other action that warrants the commencement of a formal hearing.

B. "Appellant" means the party seeking administrative appeal of a decision of a division of the Department.

C. "Burden of proof" means the burden of persuasion, the onus on the party to convince the hearing officer of all elements of the case.

D. "Cease and Desist Order" means a formal, enforceable order issued when a facility is found to be operating without a license.

E. "Certification" means

the determination which is conveyed to the appropriate oversight body as to whether a facility or agency complies with all federal or state regulations and conditions of participation to provide services. Certification of noncompliance may be the basis for a denial or termination of provider participation in a program.

F. "Department" means the New Mexico Children, Youth and Families Department.

G. "Director" means the director of any division of the Children, Youth and Families Department.

H. "Emergency suspension" means the prohibition of operation of a facility for a stated period of time by the temporary withdrawal of the license or certification, prior to a hearing on the matter, when immediate action is required to protect human health and safety. The emergency suspension is carried out by personal service of an Emergency Suspension Order and a Notice of Hearing.

I. "Facility" means any facility or agency required to be licensed or certified under state or federal law or regulation.

J. "Final decision" means the written document following a hearing, stating the final determination of the Secretary made after review of the hearing officer's report and recommendation.

K. "Five-day hearing" means the hearing noted in the emergency suspension order and notice of hearing.

L. "Hearing" means a proceeding in which legal rights, duties or privileges of a party are at issue which includes an opportunity for the parties to present testimony and evidence.

M. "Hearing officer" means an individual designated by the Secretary to conduct pre-hearing conferences and hearings and to make reports and recommendations, based on the evidence taken, to the Secretary.

N. "IFB" means an invitation to bid and is used to initiate a competitive procurement contract.

O. "Intervenor" means a party permitted to intervene in the hearing proceeding by written order of the hearing officer and includes the Department.

P. "Official notice" means administrative notice, the act by which the hearing officer, in conducting the hearing or framing his/her decision, recognizes the existence and truth of certain facts without the production of evidence by the parties.

Q. "Party" or "Parties" means the persons, entities, or agencies with a direct interest and participation in the subject matter of a hearing and such intervenors permitted to intervene by written order of the hearing officer.

R. "Person" means an individual, partnership, proprietorship, agency, corporation, company, association, tribal government or tribal organization, state or local government entity, or similar legal entity and the legal successor thereof.

S. "RFP" means a request for proposals and is used to initiate a competitive proposal procurement.

T. "Secretary" means the Secretary for the Children, Youth and Families Department.

U. "Service" means a notification by personal delivery, fax or certified mail.

V. "Subpoena" means a written command issued by the hearing officer to appear at a certain time and place to give testimony upon a certain matter. The subpoena may include a command to produce books, papers, documents and other things

W. "Working days" means, when determining compliance with various deadlines in these regulations, Monday through Friday of each calendar week, excluding state observed holidays.
[8.8.4.7 NMAC - N, 2/15/2002]

8.8.4.8 HEARING OFFICER

A. All administrative hearings are conducted by a hearing officer appointed by the Secretary or his/her designee. As soon as practicable but, in any case, no later than 5 working days following receipt of any request for an administrative appeal, the Director of the division pursuing an action, or his/her designee, submits a Memorandum of Information (MFI) to the Hearing Office, with a copy of the Notice of Contemplated Action, Cease and Desist Order, or Emergency Suspension Order and a copy of the Notice of Appeal included. An additional copy of those items will be forwarded to the Department's Office of General Counsel. Unless otherwise agreed to by the hearing officer and all parties, the hearing date will be set no later than 30 days from the date the MFI is received in the Hearing Office.

B. Qualifications of the hearing officer:

(1) The hearing officer may be an employee of the Children, Youth and Families Department but has not been involved, directly or indirectly, with the administrative decision at issue.

(2) The hearing officer need not be a licensed attorney. However, he or she shall be familiar with the applicable law, regulations, procedures, and constitutional requirements related to the administrative decision at issue.

C. Disqualification of the hearing officer:

(1) A hearing officer does not par-

participate in any proceeding if, for any reason, the hearing officer cannot afford a fair and impartial hearing to either party.

(2) The hearing officer can only be removed for good cause. Any party seeking to recuse the hearing officer must file a motion with the officer within seven (7) days of receipt of the initial communication from the hearing officer (usually, the pre-hearing conference letter), setting forth the grounds for disqualification and accompanied by all supporting reasons, affidavits, and authorities. The hearing officer rules on the request to disqualify, and an appeal of the ruling may be made to the Secretary within seven (7) days of the ruling. The Secretary promptly determines the validity of the grounds alleged and takes any appropriate action.

(3) A written request to disqualify and an appeal of the hearing officer's ruling on the matter tolls any applicable timetable for completion of the proceedings.

[8.8.4.8 NMAC - N, 2/15/2002]

8.8.4.9 PRE-HEARING

A. Upon receipt of the Memorandum of Information, copy of the Notice of Contemplated Action, Cease and Desist Order, or Emergency Suspension Order and copy of the Notice of Appeal, the hearing officer establishes an official record which will contain all the filed notices, pleadings, briefs, recommendations, correspondence, documents or items admitted into evidence, recordings of the proceedings, and decisions. The Hearing Officer will make contact with the parties as soon as practicable, but in any case, no later than 7 days from the date the appeal is filed in the Hearing Office.

B. No person may discuss the merits of any pending adjudicatory proceeding with the designated hearing officer or the Secretary, unless both parties or their representatives are present.

C. The hearing officer may consolidate or join cases if there is commonality of legal issues or parties and if it would expedite final resolution of the cases and would not adversely affect the interests of the parties. The hearing officer may join the appeals of an Appellant who has two or more appeals pending.

D. The hearing officer may permit a person to enter into a proceeding as an intervenor only when the intervention is necessary to protect some right or interest of that person which may be directly affected by the proceedings. The purpose of an intervention is to prevent delay and unnecessary duplication. A request may be denied, however, if it interferes excessively with the rights of the original parties to conduct their cause on their own terms.

E. Upon request of a party or upon the hearing officer's own motion, a pre-hearing order may be required and/or a pre-hearing conference may be scheduled by the hearing officer at a time and place reasonably convenient to all parties to:

- (1) limit and define issues;
- (2) discuss possible pre-hearing dispositions;
- (3) set a discovery plan;
- (4) consider possible admissions of fact or stipulations;
- (5) identify and limit the number of witnesses; and,
- (6) discuss such other matters as may aid in the simplification of evidence and disposition of the proceedings.

F. A pre-hearing conference is an informal proceeding and may occur telephonically. The pre-hearing conference may or may not be recorded, at the discretion of the hearing officer.

G. No offer of settlement made in a pre-hearing conference is admissible as evidence at a later hearing. Stipulations and admissions are binding and may be used as evidence at the hearing. Any stipulation, settlement or consent order reached between the parties is written and signed by the hearing officer and the parties or their attorneys.

H. The hearing officer may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the hearing officer, upon a motion to withdraw the appeal at any time before the deadline for the completion of discovery, or for failure to prosecute.

I. The hearing officer has the power to compel the appearance of witnesses and the production of written materials or other evidence the hearing officer may deem relevant or material. The hearing officer, upon request by a party, may issue subpoenas and subpoenas duces tecum. The parties have a right to discovery limited to depositions, interrogatories, requests for production, and requests for admission. All discovery is subject to the control of the hearing officer and may be made a part of the pre-hearing order.

[8.8.4.9 NMAC - N, 2/15/2002]

8.8.4.10 HEARING ON AN EMERGENCY SUSPENSION ORDER

A. An emergency suspension of a license, certification, or services requires that a hearing is held within five (5) working days of the effective date of suspension as noticed in the Emergency Suspension Order and Notice of Hearing *unless*, no later than 24 hours prior to the expiration of the five-day period, the right to a five-day hearing is waived and a request for a hearing at a later date is made.

B. If the person affected intends to appear for the five-day hearing noticed in the Emergency Suspension Order and Notice of Hearing, a request for hearing need not be made.

C. If the person affected timely waives the five-day hearing and requests a hearing to be held at a later date, the extension is provided. Pre-hearing discovery can occur; however, an extension of the five-day hearing date does not stay the emergency suspension. A person or facility is operating illegally if operations continue after the effective date of the emergency suspension and is subject to appropriate administrative and judicial sanctions and criminal charges.

[8.8.4.10 NMAC - N, 2/15/2002]

8.8.4.11 CONDUCT OF THE HEARING

A. Notice of a hearing is made by certified mail with return receipt requested at least 14 calendar days prior to the hearing unless prior agreement of the time and manner of the hearing has been agreed to in the pre-hearing order or otherwise agreed to by the parties and the hearing officer.

B. Failure of a party to appear on the date and time set for hearing, without good cause shown, constitutes a default, and the hearing officer so notifies the parties in writing.

C. The hearing is open to the public unless the Hearing Officer directs that the hearing be closed.

D. A party may appear at the hearing through a representative, provided such representative has made a written entry of appearance prior to the hearing date.

E. The hearing officer may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The Department is entitled to have a person, in addition to its attorney, in the hearing room during the course of the hearing, even if the person will also testify in the hearing.

F. The hearing is conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the State of New Mexico. However, in order to support the Secretary's decisions, there must be a residuum of legally competent evidence to support a verdict in a court of law.

G. Both parties have certain procedural due process rights during the hearing.

(1) Each party may make opening and closing statements.

(2) Each party may call and examine witnesses and introduce exhibits.

(3) Each party may cross-examine witnesses.

(4) Each party may impeach any witness.

(5) Each party may rebut any relevant evidence.

(6) Each party may introduce evidence relevant to the choice of sanction if it was raised as an issue in the pre-hearing order.

H. Oral evidence is taken only under oath or affirmation.

I. Generally, except as provided in the following subsection, the order of presentation for hearings is as follows:

(1) opening of proceeding and taking of appearances by the hearing officer;

(2) disposition of preliminary and pending matters;

(3) opening statement of the Department;

(4) opening statement of the Appellant;

(5) Department's case-in-chief;

(6) Appellant's case-in-chief;

(7) Department's rebuttal;

(8) Department's closing argument;

(9) Appellant's closing argument; and

(10) closing of the proceedings by the hearing officer.

J. The order of presentation in a denial of an initial annual license or certification, denial of an award in an RFP or IFB, or cease and desist order matters, will vary from the general order of presentation in that Appellant will make an opening statement before the Department makes its opening statement, will present a case-in-chief before the Department presents its case-in-chief, will offer a rebuttal, and will make a closing argument before the Department makes its closing argument.

K. The burden of proof in matters arising from suspension, revocation, denial of renewal of a license or certification, denial or termination of subsidies or monetary benefits, intermediate sanctions, emergency suspension, or emergency intermediate sanctions lies with the Department. The burden of proof in matters arising from a denial of an initial annual license or certification, denial of an award in an RFP or IFB, or cease and desist orders lies with the Appellant. In all cases the parties must prove their case by a preponderance of the evidence.

L. The technical rules of evidence are generally not applicable but will be used as a guide and may be considered in determining the weight to be given any item of evidence. The hearing officer admits all evidence, including affidavits, if

it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer may exclude, with or without formal objection, immaterial, irrelevant, unreliable or unduly cumulative testimony. The hearing officer may question witnesses.

M. The hearing officer may take official notice of those matters in which courts of this state may take judicial notice.

N. The rules of privilege are effective to the extent that they are required to be recognized in civil actions in the District Courts of the State of New Mexico.

O. The hearing officer admits evidence relevant only to those allegations against the Appellant included in the Notice of Contemplated Action or which are contested issues as set forth in the pre-hearing order.

P. The hearing is recorded by a sound-recording device under the supervision of the hearing officer. No other recording of the hearing, by whatever means, is permitted without the approval of the hearing officer.

[8.8.4.11 NMAC - N, 2/15/2002]

8.8.4.12 POST-HEARING

A. The hearing officer may require or permit written closing arguments, post-hearing briefs and proposed findings of facts and conclusions of law according to a scheduling order issued by the hearing officer. If case law is cited, a copy of the case will be provided to the hearing officer.

B. The hearing officer submits a recommended decision to the Secretary as soon as practicable, but no later than 25 working days, after the expiration of any time set for the submittal of the last post-hearing requests of documents, findings and conclusions, arguments or briefs.

C. As a general rule, the Secretary will only consider the hearing officer's recommended decision, post-hearing briefs, proposed findings of fact and conclusions of law. Where circumstances warrant, the Secretary may review all or a portion of the record before the hearing officer.

(1) The Secretary will not consider any additional evidence or affidavits not in the official record of the hearing or in pleadings not filed in accordance with the hearing officer's scheduling order.

(2) If the Secretary disagrees with the findings and conclusions of the hearing officer, a separate order is issued which defines the findings and conclusions at issue and the reasons a different decision is warranted.

D. The Secretary renders a

final determination as soon as practicable but no later than 15 working days after submission of the hearing officer's report. The hearing officer will notify parties of the final decision personally, by telephone or by mail, and a copy of the final decision is mailed to each party or attorney of record as soon as practicable but no later than 15 working days from receipt of the Secretary's final decision.

[8.8.4.12 NMAC - N, 2/15/2002]

8.8.4.13 RIGHT OF JUDICIAL REVIEW

A. An appeal of final decisions by the Secretary must be made to the appropriate district court pursuant to Rules 1-074 or 1-075, NMRA.

B. The hearing officer is responsible for creating the record proper.

C. All exhibits admitted into evidence, orders, submissions or motions filed and tapes or other transcripts of the hearing compose the record proper.

D. The expense of copying tape recorded testimony and any other expense of preparing the record, including accompanying costs, are the appealing party's responsibility.

E. Filing for judicial review does not stay enforcement of the final decision. A motion in state district court is filed concerning any issuance of a stay. Health and safety of Department clients is the primary consideration when a stay is requested.

[8.8.4.13 NMAC - N, 2/15/2002]

8.8.4.14 PROCUREMENT

PROTESTS: Any bidder or offeror that falls within the scope and authority of the Procurement Code will have the right to protest as provided in 1 NMAC 5-2-80 through 5-2-93.

[8.8.4.14 NMAC - N, 2/15/2002]

HISTORY OF 8.8.4 NMAC: [RESERVED]

NEW MEXICO DNA IDENTIFICATION OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

Explanatory paragraph: The DNA Identification Oversight Committee, as an emergency action, approved this amendment. As such, it is requested that it be treated as an emergency rule filing and become effective upon filing. The purpose of this change is to allow the notification of a match to the servicing laboratory prior to the completion of all confirmation steps. This allows for the advance

investigation of a matched violent offender pending the confirmation of the generated DNA profile. The amendment consists of the deletion of a portion of Paragraph 2 of Subsection E of 10.14.200.11 NMAC as indicated below.

10.14.200.11 ACCESS TO DNA SAMPLE INFORMATION, RECORDS AND SAMPLES:

E. Database hits:

(2) ~~[Should the profile be confirmed, a]~~ A written report indicating the match shall be forwarded to the requesting agency through their servicing laboratory. Release of personal identifying information shall be made only after compliance with Subsection C of 10.14.200.11 NMAC.

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.31.8 NMAC, sections 22, 23, 24, and 29.

19.31.8.22 BEAR (2002-2003):

A. The bear seasons shall be as stated below:

(1) August 1 through August 31 and September 25 through November 15 in GMU's 4, 5, 6, 7, 8 (Sandia Ranger District of the Cibola National Forest shall be open for hunting with bow only), 9 (including Marquez and Water Canyon WMA's), 10, 13, 14, 15, 16, 17, 21, 22, 23, 24, 26, 27, 34, 36, 37, 38, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58.

(2) Bear entry hunts, listing the hunt date, hunt code, maximum number of licenses available, and open areas shall be as indicated below. Dogs may not be used to pursue bears during bear entry hunts.

(a) August 1-31 BER-1-101
10 Sargent Wildlife Area.

(b) August 1-31 BER-1-102
5 William A. Humphries Wildlife Area.

(c) August 1-31 BER- 1-103
12 Elliot Barker/Colin Neblett Wildlife Areas.

(3) Any licensed bear hunter who is a recipient of a muzzleloader or rifle elk permit for the Valle Vidal may harvest one bear in the Valle Vidal during their allotted elk hunt period. Dogs may not be used to

pursue bears in the Valle Vidal.

B. Bag limit shall be as indicated below:

(1) One bear except any female accompanied by a cub or cubs, and except any cubs less than a year old ~~as prescribed in 19.31.8.22 (A)].~~

(2) A second bear, except any female accompanied by a cub or cubs, and except any cubs less than a year old may be harvested in GMU's 4 (except Sargent and W.A. Humphries Wildlife Areas), 24, 36, 53, 54, and 55 (except E.S. Barker and Colin Neblett Wildlife Areas).

C. Legal weapons for taking bear in any open units except in the Valle Vidal shall be any legal weapon. Legal weapons for taking bear in the Valle Vidal shall be the legal weapon for the corresponding elk hunt.

D. Bear hunters shall purchase their bear license at least two days prior to hunting bear.

E. All bear taken shall be tagged with both the tag from the hunting license and the pelt tag furnished free of charge from the Department. A hunter who takes a bear must present the skull for tooth removal and pelt for tagging to a Department representative within five days of taking the animal or before taking the pelt out of New Mexico, whichever comes first. The pelt tag shall remain attached to the pelt until the pelt is processed.

[4-1-95, A, 8-15-95; R 3-14-98; Re-pr, 3-15-99; 19.31.8.22 NMAC – Rn & A, 19 NMAC 31.8.22, 3-14-2001; A, 12-28-01; A, 02-14-02]

19.31.8.23 COUGAR (2002-2003):

A. Cougar season within each Cougar Zone shall be October 1 through March 31, or until the cougar harvest objective has been met within the specific Cougar Zone, whichever occurs first. Exception: Cougar season in the bighorn sheep ranges of Zones G, H, K, and L (ie, Ladron, Manzano, Peloncillo, Little and Big Hatchets, Animas, Alamo Hueco, Saliz, Mogollon, Organ, and San Andres Mountains) shall be April 1 through March 31 and Cougars taken in those bighorn sheep ranges shall not count against the quota for that zone. These bighorn sheep ranges

include Mesa Sarca and the entire Ladron Mountains to the south side of the Rio Salado in Game Management Unit (GMU) 13 except that portion on the Sevilleta National Wildlife Refuge; that portion of the Manzano Mountains in GMU 14 from Comanche Canyon south to US Highway 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; all of GMU's 22A and 22B; that portion of GMU 23 that is south of the Apache and Gila National Forest boundary and north of State Highway 78; that portion of GMU 24 that is west of State Highway 15; that portion of GMU 19 beginning at the intersection of US Highway 70 and Interstate 25 (I-25) running south along I-25 to its intersection with Interstate 10 (I-10), thence south along I-10 to its intersection with the Texas/New Mexico State line, thence east along the State line to its intersection with NM Road 213, thence north along NM Road 213, which in turn becomes White Sands Missile Range (WSMR) range road 1 to its intersections with US Highway 70, thence east along US Highway 70 to its intersection with WSMR range road 7, thence north along WSMR range road 7 to its intersection with WSMR range road 306 (Hembrillo canyon Rd.), thence west along WSMR range road 306 to its intersection with the western boundary of WSMR, thence south along the WSMR boundary to its intersection with US Highway 70; thence west along US Highway 70 to its intersection with I-25.

(1) The Sandia Ranger District of the Cibola National Forest portion of Zone F shall be open for hunting with bow only.

(2) Cougar seasons on private property-Statewide: Cougar season on private land shall be April 1 through March 31 (season bag limits still apply). Private landowners (if legally licensed) and their employees (if legally licensed) may hunt on the owner's private property only and cougar taken shall not count against the quota for that zone.

B. The harvest objective for each Cougar Zone is indicated below:

- (1) Zone A ~~[San Juan Mountains,]~~ GMU's 2 and 7, (14 cougars).
- (2) Zone B ~~[Northern Jemez Mountains,]~~ GMU's 5, 50, and 51, ~~[52,]~~ (20 cougars).
- (3) Zone C ~~[Sangre de Cristo Mountains,]~~ GMU's 43, 44, 45, 46, 48, 49, 53, 54, and 55, (38 cougars).
- (4) Zone D ~~[High Northeast Plains,]~~ GMU's 41, 42, 47, 56, 57, and 58, (14 cougars).
- (5) Zone E ~~[West Central Mountains,]~~ GMU's 9, ~~[and]~~ 10, (16 cougars).
- (6) Zone F ~~[Sandia and southern Jemez Mountains,]~~ GMU's 6 and 8, (16 cougars).
- (7) Zone G ~~[Manzano, San Mateo Mountains and North,]~~ GMU's 13, 14, and 17, (17 cougars).
- (8) Zone H ~~[Military Reservations in]~~ GMU's 19, 20, 28, and 29, (3 cougars).
- (9) Zone I ~~[Guadalupe, Sacramento Mountains and North,]~~ GMU's 18, 30, 34, 36, 37, and 38, ~~[40,]~~ (20 cougars) (20 cougars).

- (10) Zone J ~~{Gila Mountains}~~ GMU's 15, 16, 21, and 25, (38 cougars).
 (11) Zone K ~~{Southwest Mountains}~~ GMU's 22, 23, and 24, (22 cougars).
 (12) Zone L ~~{Southwest Deserts}~~ GMU's 26 and 27, (No Quota).
 (13) Zone M ~~{Southeast}~~ GMU's 31, 32, 33, 39, and 40, (5 cougars).
 (14) Zone N ~~{Northern Jemez Mountains}~~ GMU's 4 and 52, (3 cougars).
 (15) Zone O ~~{West Central}~~ GMU 12, (3 cougars)

C. Bag limits shall be as indicated below:

(1) One Cougar, except any female accompanied by a spotted kitten(s), and except any spotted kitten.

(2) A second cougar, except any female accompanied by a spotted kitten(s), and except any spotted kitten, may be taken in any of the bighorn sheep ranges outlined in section A.

D. Hunters shall purchase a cougar license at least two days prior to hunting cougar.

E. All cougar taken shall be tagged with both the tag from the hunting license and the pelt tag furnished free of charge from the Department. A hunter who takes a cougar must present the skull for tooth removal and pelt for tagging to a Department representative within five days of taking the animal or before taking the pelt out of New Mexico, whichever comes first. The pelt tag shall remain attached to the pelt until the pelt is processed. Immediately following the pelt tagging the Department employee shall call the Division of Wildlife with the information regarding the take of cougar.

F. When the number of cougars equaling the cougar harvest objective for a given cougar zone has been met, that zone will close 72 hours thereafter. Hunters shall call the toll-free telephone number, provided by the Department, before hunting to determine which Cougar Zones are open.

G. The Director, at his discretion, may adjust or cancel portions of any cougar hunt to address significant changes in population or harvest objectives.

[4-1-95, A, 8-15-95; R 3-14-98; Re-pr, 3-15-99; 19.31.8.23 NMAC – Rn & A, 19 NMAC 31.8.23, 3-14-2001; A, 12-28-01; A, 02-14-02]

19.31.8.24 ELK (2002-2003)

A. The Director, at his discretion, may adjust the number of public and/or private land elk permits up to 20 percent of the current permit numbers to address significant changes in population or harvest parameters.

B. Public land elk hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

- (1) Sept. 28 – Oct. 2, ELK-1-001, 5, MB, Sierra Grande Hunt Area in 56.
 (2) Sept. 28 – Oct. 2, ELK-1-002, 5, MB, Sargent WMA in 4.
 (3) Oct. 5 – 9, ELK-1-003, 15, MB, Sargent WMA in 4.
 (4) Oct. 5 – 9, ELK-1-004, 10, MB, Humphries-Rio Chama WMA's in 4.
 (5) Oct. 5 – 9, ELK-1-005, 5, MB, 5A (Public land only).
 (6) Oct. 5 – 9, ELK-1-006, 100, MB, 5B.
 (7) Oct. 5 – 9, ELK-1-007, 150, ES, 12.
 (8) Oct. 5 – 9, ELK-1-008, 50, A, 16A (Youth only, must provide hunter education certification number on application.).
 (9) Oct. 5 – 9, ELK-1-009, 50, A, 16D (Youth only, must provide hunter education certification number on application.).
 (10) Oct. 5 – 9, ELK-1-010, 80, ES, 21B.
 (11) Oct. 5 – 9, ELK-1-011, 20, ES, 22A.
 (12) Oct. 5 – 9, ELK-1-012, 350, ES, 23.
 (13) Oct. 5 – 9, ELK-1-013, 200, ES, 24 (excluding Ft. Bayard).
 (14) Oct. 5 – 9, ELK-1-014, Unlimited, ES, 43.
 (15) Oct. 5 – 9, ELK-1-015, 140, MB, 44/45.
 (16) Oct. 5 – 9, ELK-1-016, 180, MB, 49.
 (17) Oct. 5 – 9, ELK-1-017, 100, MB, 50.
 (18) Oct. 5 – 9, ELK-1-018, 20, A, 50.
 (19) Oct. 5 – 9, ELK-1-019, 200, MB, 51.
 (20) Oct. 5 – 9, ELK-1-020, 20, MB, Colin Neblett WMA-South in 54.
 (21) Oct. 5 – 9, ELK-1-021, 20, MB, Colin Neblett WMA-North in 55.
 (22) Oct. 5 – 9, ELK-1-022, 10, MB, Urraca WMA in 55.
 (23) Oct. 5 – 9, ELK-1-023, 35, MB, Valle Vidal/Greenwood areas in 55.
 (24) Oct. 5 – 9, ELK-1-024, 30, A, Valle Vidal/Greenwood areas in 55.
 (25) Oct. 12 – 16, ELK-1-025, 250, MB, 2.
 (26) Oct. 12 – 16, ELK-1-026, 100, A, 2.
 (27) Oct. 12 – 16, ELK-1-027, 15, MB, Sargent WMA in 4.
 (28) Oct. 12 – 16, ELK-1-028, 10, MB, Humphries-Rio Chama WMA's in 4.
 (29) Oct. 12 – 16, ELK-1-029, 5, MB, 5A (Public land only).
 (30) Oct. 12 – 16, ELK-1-030, 100, MB, 6A.
 (31) Oct. 12 – 16, ELK-1-031, 150, MB, 6C.
 (32) Oct. 12 – 16, ELK-1-032, 250, MB, 10.
 (33) Oct. 12 – 16, ELK-1-033, 150, ES, 12.
 (34) Oct. 12 – 16, ELK-1-034, 110, MB, 16A.
 (35) Oct. 12 – 16, ELK-1-035, 200, MB, 16B.
 (36) Oct. 12 – 16, ELK-1-036, 65, MB, 16C.
 (37) Oct. 12 – 16, ELK-1-037, 50, MB, 16D.

- (38) Oct. 12 – 16, ELK-1-038, 50, MB, 16E.
 (39) Oct. 12 – 16, ELK-1-039, 45, MB, 21A.
 (40) Oct. 12 – 16, ELK-1-040, 40, ES, 21B.
 (41) Oct. 12 – 16, ELK-1-041, 10, ES, 22A.
 (42) Oct. 12 – 16, ELK-1-042, 300, ES, 23.
 (43) Oct. 12 – 16, ELK-1-043, 100, ES, 24 (excluding Ft. Bayard).
 (44) Oct. 12 – 16, ELK-1-044, 10, ES, 24 (including Ft. Bayard, Youth only, must provide hunter education certification number on application.).
 (45) Oct. 12 – 16, ELK-1-045, 300, MB, 34.
 (46) Oct. 12 – 16, ELK-1-046, 300, A, 34.
 (47) Oct. 12 – 16, ELK-1-047, 115, MB, 36.
 (48) Oct. 12 – 16, ELK-1-048, 100, A, 36.
 (49) Oct. 12 – 16, ELK-1-049, 140, MB, 44/45.
 (50) Oct. 12 – 16, ELK-1-050, 95, MB, 49.
 (51) Oct. 12 – 16, ELK-1-051, 100, MB, 50.
 (52) Oct. 12 – 16, ELK-1-052, 20, A, 50.
 (53) Oct. 12 – 16, ELK-1-053, 200, MB, 51.
 (54) Oct. 12 – 16, ELK-1-054, 250, MB, 52.
 (55) Oct. 12 – 16, ELK-1-055, 180, MB, 53 (except Cerro portion).
 (56) Oct. 12 – 16, ELK-1-056, 20, MB, Colin Neblett WMA-North in 55.
 (57) Oct. 12 – 16, ELK-1-057, 20, MB, Colin Neblett WMA-South in 54.
 (58) Oct. 12 – 16, ELK-1-058, 10, MB, Urraca WMA in 55.
 (59) Oct. 12 – 16, ELK-1-059, 35, MB, Valle Vidal/Greenwood area in 55.
 (60) Oct. 12 – 16, ELK-1-060, 30, A, Valle Vidal/Greenwood area in 55.
 (61) Oct. 12 – 16, ELK-1-061, 10, A, Sierra Grande Hunt Area in 56.
 (62) Oct. 19 – 23, ELK-1-062, 15, MB, Sargent WMA in 4.
 (63) Oct. 19 – 23, ELK-1-063, 10, MB, Humphries-Rio Chama WMA's in 4.
 (64) Oct. 19 – 23, ELK-1-064, 5, MB, 5A (Public land only).
 (65) Oct. 19 – 23, ELK-1-065, 100, MB, 5B.
 (66) Oct. 19 – 23, ELK-1-066, 150, MB, 6C.
 (67) Oct. 19 – 23, ELK-1-067, 25, MB, 7.
 (68) Oct. 19 – 23, ELK-1-068, 300, A, 10.
 (69) Oct. 19 – 23, ELK-1-069, 185, MB, 16A.
 (70) Oct. 19 – 23, ELK-1-070, 200, MB, 16B.
 (71) Oct. 19 – 23, ELK-1-071, 70, MB, 16C.
 (72) Oct. 19 – 23, ELK-1-072, 60, MB, 16D.
 (73) Oct. 19 – 23, ELK-1-073, 65, MB, 16E.
 (74) Oct. 19 – 23, ELK-1-074, 60, MB, 21A.
 (75) Oct. 19 – 23, ELK-1-075, 50, MB, 22B.
 (76) Oct. 19 – 23, ELK-1-076, 25, A, 24 (including Ft. Bayard, Youth only, must provide hunter education certification number on application.).
 (77) Oct. 19 – 23, ELK-1-077, 300, A, 34.
 (78) Oct. 19 – 23, ELK-1-078, 115, MB, 36.
 (79) Oct. 19 – 23, ELK-1-079, 95, A, 36.
 (80) Oct. 19 – 23, ELK-1-080, 55, MB, 48.
 (81) Oct. 19 – 23, ELK-1-081, 40, A, 48.
 (82) Oct. 19 – 23, ELK-1-082, 95, MB, 49.
 (83) Oct. 19 – 23, ELK-1-083, 200, MB, 51.
 (84) Oct. 19 – 23, ELK-1-084, 200, MB, 52.
 (85) Oct. 19 – 23, ELK-1-085, 95, MB, 53 (except Cerro portion).
 (86) Oct. 19 – 23, ELK-1-086, 20, MB, Colin Neblett WMA-South in 54.
 (87) Oct. 19 – 23, ELK-1-087, 20, MB, Colin Neblett WMA-North in 55.
 (88) Oct. 19 – 23, ELK-1-088, 10, MB, Urraca WMA in 55.
 (89) Oct. 19 – 23, ELK-1-089, 35, MB, Valle Vidal/Greenwood areas in 55.
 (90) Oct. 19 – 23, ELK-1-090, 30, A, Valle Vidal/Greenwood areas in 55.
 (91) Oct. 26 – 30, ELK-1-091, 5, MB, 5A(Public land only).
 (92) Oct. 26 – 30, ELK-1-092, 100, MB, 6A.
 (93) Oct. 26 – 30, ELK-1-093, 90, A, 16A.
 (94) Oct. 26 – 30, ELK-1-094, 75, A, 16B.
 (95) Oct. 26 – 30, ELK-1-095, 115, A, 16D.
 (96) Oct. 26 – 30, ELK-1-096, 110, A, 16E.
 (97) Oct. 26 – 30, ELK-1-097, 25, A, 21A.
 (98) Oct. 26 – 30, ELK-1-098, 55, MB, 48.
 (99) Oct. 26 – 30, ELK-1-099, 40, A, 48.
 (100) Oct. 26 – 30, ELK-1-100, 250, A, 51.
 (101) Oct. 26 – 30, ELK-1-101, 200, MB, 52.

- (102) Oct. 26 – 30, ELK-1-102, 45, A, Valle Vidal/Greenwood areas in 55.
(103) Oct. 30 – Nov. 3, ELK-1-103, 100, ES, 14.
(104) Nov. 2 – 6, ELK-1-104, 100, MB, 5B.
(105) Nov. 2 – 6, ELK-1-105, 25, MB, 7.
(106) [RESERVED]
(107) Nov. 2 – 6, ELK-1-107, 90, A, 16A.
(108) Nov. 2 – 6, ELK-1-108, 50, A, 16C.
(109) Nov. 2 – 6, ELK-1-109, 115, A, 16D.
(110) Nov. 2 – 6, ELK-1-110, 120, A, 16E.
(111) Nov. 2 – 6, ELK-1-111, 40, ES, 21B.
(112) Nov. 2 – 6, ELK-1-112, 10, ES, 22A.
(113) Nov. 2 – 6, ELK-1-113, 100, ES, 23.
(114) Nov. 2 – 6, ELK-1-114, 50, ES, 24 (excluding Ft. Bayard).
(115) Nov. 2 – 6, ELK-1-115, 250, A, 51.
(116) Nov. 2 – 6, ELK-1-116, 100, A, 52.
(117) Nov. 2 – 6, ELK-1-117, 45, A, Valle Vidal/Greenwood areas in 55.
(118) Nov. 9 – 13, ELK-1-118, 15, A, Sargent WMA in 4.
(119) Nov. 9 – 13, ELK-1-119, 30, A, Humphries-Rio Chama WMA's in 4.
(120) Nov. 9 – 13, ELK-1-120, 190, A, 6A.
(122) Nov. 9 – 13, ELK-1-122, 120, A, 16A.
(123) Nov. 9 – 13, ELK-1-123, 45, A, 16C.
(124) Nov. 9 – 13, ELK-1-124, 115, A, 16D.
(125) Nov. 9 – 13, ELK-1-125, 120, A, 16E.
(126) Nov. 9 – 13, ELK-1-126, 20, ES, 21B.
(127) Nov. 9 – 13, ELK-1-127, 10, ES, 22A.
(128) Nov. 9 – 13, ELK-1-128, 100, ES, 23.
(129) Nov. 9 – 13, ELK-1-129, 50, ES, 24 (excluding Ft. Bayard).
(130) Nov. 9 – 13, ELK-1-130, 100, A, 52.
(131) Nov. 16 – 20, ELK-1-131, 15, A, Sargent WMA in 4.
(132) Nov. 16 – 20, ELK-1-132, 30, A, Humphries-Rio Chama WMA's in 4.
(133) Nov. 16 – 20, ELK-1-133, 210, A, 5B.
(134) Nov. 16 – 20, ELK-1-134, 300, A, 6C.
(135) Nov. 16 – 20, ELK-1-135, 60, A, 49.
(136) Nov. 23 – 27, ELK-1-136, 10, A, Sargent WMA in 4.
(137) Nov. 23 – 27, ELK-1-137, 30, A, Humphries-Rio Chama WMA's in 4.
(138) Nov. 23 – 27, ELK-1-138, 9, A, 5A (Public land only).
(139) Nov. 23 – 27, ELK-1-139, 210, A, 5B.
(140) Nov. 23 – 27, ELK-1-140, 300, A, 6C.
(141) Nov. 23 – 27, ELK-1-141, 195, A, 9 (including Water Canyon WMA).
(142) Nov. 23 – 27, ELK-1-142, 5, A, Marquez WMA in 9.
(143) Nov. 23 – 27, ELK-1-143, 20, A, Colin Neblett WMA-South in 54.
(144) Nov. 23 – 27, ELK-1-144, 20, A, Colin Neblett WMA-North in 55.
(145) Nov. 30 – Dec. 4 ELK-1-145, 330, A, 2.
(146) Nov. 30 – Dec. 4 ELK-1-146, 9, A, 5A (Public land only).
(147) [RESERVED]
(148) Nov. 30 – Dec. 4 ELK-1-148, 45, A, 16C.
(149) [RESERVED]
(150) [RESERVED]
(151) [RESERVED]
(152) [RESERVED]
(153) Nov. 30 – Dec. 4 ELK-1-153, 55, MB, 48.
(154) Nov. 30 – Dec. 4 ELK-1-154, 40, A, 48.
(155) Nov. 30 – Dec. 4 ELK-1-155, 25, A, 53 (except Cerro portion).
(156) Nov. 30 – Dec. 4 ELK-1-156, 15, A, Urraca WMA in 55.
(157) Dec. 7 – 11, ELK-1-157, 9, A, 5A (Public land only).
(158) Dec. 7 – 11, ELK-1-158, 120, A, 7.
(159) [RESERVED]
(160) [RESERVED]
(161) [RESERVED]
(162) [RESERVED]
(163) [RESERVED]
(164) Dec. 7 – 11, ELK-1-164, 300, A, 34.
(165) Dec. 7 – 11, ELK-1-165, 50, A, 50.
(166) Dec. 7 – 11, ELK-1-166, 25, A, 53 (except Cerro portion).
(167) Dec. 7 – 11, ELK-1-167, 15, A, Urraca WMA in 55.
(168) Dec. 14 – 18, ELK-1-168, 9, A, 5A (Public land only).

- (169) Dec. 14 – 18, ELK-1-169, 100, A, 12.
 (170) Dec. 14 – 18, ELK-1-170, 30, A, 21B.
 (171) Dec. 14 – 18, ELK-1-171, 10, A, 22A.
 (172) Dec. 14 – 18, ELK-1-172, 50, A, 23.
 (173) Dec. 14 – 18, ELK-1-173, 50, A, 24 (excluding Ft. Bayard).]
 (174) Jan. 11 – 15, 2003, ELK-1-174, 25, A, 53 (except Cerro portion).
 (175) Jan. 11 – 15, 2003, ELK-1-175, 15, A, Urraca WMA in 55.
 (176) [RESERVED]
 (177) [RESERVED]
 (178) [RESERVED]
 (179) [RESERVED]
 (180) [RESERVED]
 (181) Feb. 15 – 19, 2003, ELK-1-181, 100, A, 12.
 (182) Feb. 15 – 19, 2003, ELK-1-182, 30, A, 21B.
 (183) Feb. 15 – 19, 2003, ELK-1-183, 10, A, 22A.
 (184) Feb. 15 – 19, 2003, ELK-1-184, 50, A, 23.
 (185) Feb. 15 – 19, 2003, ELK-1-185, 50, A, 24 (excluding Ft. Bayard).
 (186) [RESERVED]
 (187) [RESERVED]
 (188) [RESERVED]
 (189) [RESERVED]
 (190) [RESERVED]
 (191) [RESERVED]
 (192) Mar. 15 – 19, 2003, ELK-1-192, 30, ES, 21B.
 (193) Mar. 15 – 19, 2003, ELK-1-193, 10, ES, 22A.
 (194) Mar. 15 – 19, 2003, ELK-1-194, 50, ES, 23.
 (195) Mar. 15 – 19, 2003, ELK-1-195, 50, ES, 24 (excluding Ft. Bayard).
 (196) [RESERVED]
 (197) [RESERVED]
 (198) [RESERVED]
 (199) [RESERVED]
 (200) [RESERVED]
 (201) Oct. 05 - 09, 2002, ELK-1-201, 25 MB, 6B.
 (202) Oct. 05 - 09, 2002, ELK-1-202, 5 A, 6 B.
 (203) Oct. 12 - 16, 2002, ELK-1-203, 20 MB, 6 B.
 (204) Oct. 12 - 16, 2002, ELK-1-204, 5 A, 6 B.
 (205) Oct. 19 - 23, 2002, ELK-1-205, 20 MB, 6 B.
 (206) Oct. 19 - 23, 2002, ELK-1-206, 5 A, 6 B.
 (207) Nov. 02 - 04, 2002, ELK-1-207, 25 A, 6 B. (Youth only, must provide hunter education certification number on application.)
 (208) [RESERVED]
 (209) Nov. 16 - 18, 2002, ELK-1-209, 25 A, 6 B.
 (210) Nov. 23 - 25, 2002, ELK-1-210, 25 A, 6 B.
 (211) Nov.30 - Dec.02, 2002, ELK-1-211, 25 A, 6 B.
 (212) Nov.30 - Dec.04,2002, ELK-1-212, 260 A, 6C.
 (213) Dec. 14 -18, 2002, ELK-1-213, 120 A, 7.
 (214) Jan. 25 - 29, 2003, ELK-1-214, 100 A, 10.
 (215) Feb. 01- 05, 2003, ELK-1-215, 110 A, 10.
 (216) Feb. 08 -12, 2003, ELK-1-216, 110 A, 10.
 (217) Oct. 19-23, 2002, ELK-1-217, 300 MB, 34.
 (218) Dec. 14 -18,2002, ELK-1-218, 300 A, 34.
 (219) Oct. 19-23, 2002, ELK-1-219, 150 A, 44/45.
 (220) Nov. 16-20, 2002, ELK-1-220, 100 A, 52.
 (221) Nov. 23-27, 2002, ELK-1-221, 100 A, 52.
 (222) Oct. 19-23, 2002, ELK-1-222, 40 ES 21B.
 (223) Oct. 19-23, 2002, ELK-1-223, 10 ES, 22 A.
 (224) Oct. 19-23, 2002, ELK-1-224, 100 ES, 23.
 (225) Oct. 19-23, 2002, ELK-1-225, 100 ES, 24 (EXCLUDING Ft. Bayard)
 (226) Oct. 26-30, 2002, ELK-1-226, 40 ES, 21B.
 (227) Oct. 26-30, 2002, ELK-1-227, 10 ES, 22 A.
 (228) Oct. 26-30, 2002, ELK-1-228, 100 ES, 23.
 (229) Oct. 26-30, 2002, ELK-1-229, 100 ES, 24 (EXCLUDING Ft. Bayard)
 (230) Oct. 26-30, 2002, ELK-1-230, 10 A, Valle Vidal/Greenwood areas in 55-YOUTH ONLY.
 (231) Nov. 9-13, 2002, ELK-1-231, 10 A, Sargent WMA IN 4 YOUTH ONLY.
 (232) Nov. 9-13, 2002, ELK-1-232, 10 A, Humphries-Rio Chama WMA's in 4 YOUTH ONLY.
 (233) Nov. 16-20, 2002, ELK-1-233, 150 ES, 12.

(234) Nov. 23-27, 2002, ELK-1-234, 150 ES, 12.

C. Public land elk hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

- (1) Sept. 1 - 20, ELK-2-001, 300, ES, 2.
- (2) Sept. 1 - 20, ELK-2-002, 10, ES, 5A (Public land only).
- (3) Sept. 1 - 20, ELK-2-003, 225, ES, 5B.
- (4) Sept. 1 - 20, ELK-2-004, 150, ES, 6A.
- (5) Sept. 1 - 20, ELK-2-005, 450, ES, 6C.
- (6) Sept. 1 - 20, ELK-2-006, 25, ES, 7.
- (7) Sept. 1 - 20, ELK-2-007, 395, ES, 9 (Including Water Canyon WMA).
- (8) Sept. 1 - 20, ELK-2-008, 5, ES, Marquez WMA in 9.
- (9) Sept. 1 - 20, ELK-2-009, 250, ES, 10.
- (10) Sept. 1 - 20, ELK-2-010, 100, ES, 12
- (11) [RESERVED]
- (12) Sept. 1 - 20, ELK-2-012, 225, ES, 36.
- (13) Sept. 1 - 20, ELK-2-013, 150, ES, 44/45.
- (14) Sept. 1 - 20, ELK-2-014, 200, ES, 48.
- (15) Sept. 1 - 20, ELK-2-015, 120, ES, 49.
- (16) Sept. 1 - 20, ELK-2-016, 120, ES, 50.
- (17) Sept. 1 - 20, ELK-2-017, 200, ES, 51.
- (18) Sept. 1 - 20, ELK-2-018, 350, ES, 52.
- (19) Sept. 1 - 20, ELK-2-019, 150, ES, 53.
- (20) Sept. 1 - 20, ELK-2-020, 35, ES, Valle Vidal/Greenwood areas in 55.
- (21) Sept. 1 - 20, ELK-2-021, 10, ES, E.S. Barker WMA in 55.
- (22) Sept. 1-15, ELK-2-022, 85, ES, 13.
- (23) Sept. 1-15, ELK-2-023, 300, ES, 15A.
- (24) Sept. 1-15, ELK-2-024, 75, A, 15A.
- (25) Sept. 1-15, ELK-2-025, 275, ES, 15B.
- (26) Sept. 1-15, ELK-2-026, 50, A, 15B.
- (27) Sept. 1-15, ELK-2-027, 260, ES, 16A.
- (28) Sept. 1-15, ELK-2-028, 75, A, 16A.
- (29) Sept. 1-15, ELK-2-029, 250, ES, 16B.
- (30) Sept. 1-15, ELK-2-030, 150, ES, 16C.
- (31) Sept. 1-15, ELK-2-031, 45, A, 16C.
- (32) Sept. 1-15, ELK-2-032, 135, ES, 16D.
- (33) Sept. 1-15, ELK-2-033, 40, A, 16D.
- (34) Sept. 1-15, ELK-2-034, 70, ES, 16E.
- (35) Sept. 1-15, ELK-2-035, 50, A, 16E
- (36) Sept. 1-15, ELK-2-036, 100, ES, 17.
- (37) Sept. 1-15, ELK-2-037, 40, A, 17.
- (38) Sept. 1-15, ELK-2-038, 25, ES, 18.
- (39) Sept. 1-15, ELK-2-039, 60, ES, 21A.
- (40) Sept. 1-15, ELK-2-040, 20, A, 21A.
- (41) Sept. 1-15, ELK-2-041, 50, ES, 21B.
- (42) Sept. 1-15, ELK-2-042, 10, ES, 22A.
- (43) Sept. 1-15, ELK-2-043, 10, ES, 22B.
- (44) Sept. 1-15, ELK-2-044, 200, ES, 23.
- (45) Sept. 1-15, ELK-2-045, 50, ES, 24 (except Ft. Bayard).
- (46) Sept. 16 - 24, ELK-2-046, 85, ES, 13.
- (47) Sept. 16 - 24, ELK-2-047, 125, ES, 15A.
- (48) Sept. 16 - 24, ELK-2-048, 115, ES, 15B.
- (49) Sept. 16 - 24, ELK-2-049, 130, ES, 16A.
- (50) Sept. 16 - 24, ELK-2-050, 150, ES, 16B.
- (51) Sept. 16 - 24, ELK-2-051, 100, ES, 16C.
- (52) Sept. 16 - 24, ELK-2-052, 85, ES, 16D.
- (53) Sept. 16 - 24, ELK-2-053, 50, ES, 16E.
- (54) Sept. 16 - 24, ELK-2-054, 60, ES, 17.
- (55) Sept. 16 - 24, ELK-2-055, 25, ES, 18.
- (56) Sept. 16 - 24, ELK-2-056, 30, ES, 21A.
- (57) Sept. 16 - 24, ELK-2-057, 40, ES, 21B.
- (58) Sept. 16 - 24, ELK-2-058, 10, ES, 22A.
- (59) Sept. 16 - 24, ELK-2-059, 20, ES, 22B.
- (60) Sept. 16 - 24, ELK-2-060, 200, ES, 23.
- (61) Sept. 16 - 24, ELK-2-061, 50, ES, 24 (except Ft. Bayard).
- (62) Sept. 10 - 20, ELK-2-062, 25, MB, 6B.
- (63) Sept. 10 - 20, ELK-2-063, 5, A, 6 B.

(64) Sept. 01 - 15, ELK-2-064, ~~300~~ 500 ES. 34.

(65) Sept. 16 - 24, ELK-2-065, ~~300~~ 500 ES. 34.

D. Public land elk hunts for muzzle-loaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

(1) Sept. 28 - Oct. 2, ELK-3-001, 230, A, 9 (Including Water Canyon WMA).

(2) Sept. 28 - Oct. 2, ELK-3-002, 5, A, Marquez WMA in 9.

(3) Sept. 28 - Oct. 2, ELK-3-003, 140, MB, 44/45.

(4) Sept. 28 - Oct. 2, ELK-3-004, 20, MB, Colin Neblett WMA-South in 54.

(5) Sept. 28 - Oct. 2, ELK-3-005, 20, MB, Colin Neblett WMA-North in 55.

(6) Sept. 28 - Oct. 2, ELK-3-006, 35, ES, Valle Vidal/Greenwood areas in 55.

(7) Oct. 5 - 9, ELK-3-007, 350, MB, 2.

(8) Oct. 5 - 9, ELK-3-008, 100, MB, 6A.

(9) Oct. 5 - 9, ELK-3-009, 300, MB, 6C.

(10) Oct. 5 - 9, ELK-3-010, 25, MB, 7.

(11) Oct. 5 - 9, ELK-3-011, 185, MB, 9 (Including Water Canyon WMA).

(12) Oct. 5 - 9, ELK-3-012, 5, MB, Marquez WMA in 9.

(13) Oct. 5 - 9, ELK-3-013, 250, MB, 10.

(14) Oct. 5 - 9, ELK-3-014, 100, ES, 13.

(15) Oct. 5 - 9, ELK-3-015, ~~300~~ 500, MB, 34.

(16) Oct. 5 - 9, ELK-3-016, 150, MB, 36.

(17) Oct. 5 - 9, ELK-3-017, 75, MB, 48.

(18) Oct. 5 - 9, ELK-3-018, 100, MB, 52.

(19) Oct. 5 - 9, ELK-3-019, 150, A, 52.

(20) Oct. 5 - 9, ELK-3-020, 100, A, 53 (except Cerro portion).

(21) Oct. 5 - 9, ELK-3-021, 10, MB, E.S. Barker WMA in 55.

(22) Oct. 12 -16, ELK-3-022, 185, MB, 9 (Including Water Canyon WMA).

(23) Oct. 12 -16, ELK-3-023, 5, MB, Marquez WMA in 9.

(24) Oct. 12 - 16, ELK-3-024, 100, ES, 13.

(25) Oct. 12 -16, ELK-3-025, 100, MB, 15A.

(26) Oct. 12 -16, ELK-3-026, 75, MB, 15B.

(27) Oct. 12 -16, ELK-3-027, 80, MB, 17.

(28) Oct. 12 -16, ELK-3-028, 60, MB, 48.

(29) Oct. 12 -16, ELK-3-029, 80, A, 48.

(30) Oct. 19 - 23, ELK-3-030, 185, MB, 9 (Including Water Canyon WMA).

(31) Oct. 19 - 23, ELK-3-031, 5, MB, Marquez WMA in 9.

(32) Oct. 19 - 23, ELK-3-032, 200, MB, 15A.

(33) Oct. 19 - 23, ELK-3-033, 150, MB, 15B.

(34) Oct. 19 - 23, ELK-3-034, 90, MB, 17.

(35) Nov. 2 - 6, ELK-3-035, 100, ES, 13.

(36) Nov. 2 - 6, ELK-3-036, 380, A, 15A.

(37) Nov. 2 - 6, ELK-3-037, 180, A, 15B.

(38) Nov. 2 - 6, ELK-3-038, 110, A, 17.

(39) Nov. 9 - 13, ELK-3-039, 140, A, 9 (Including Water Canyon WMA).

(40) Nov. 9 - 13, ELK-3-040, 5, A, Marquez WMA in 9.

(41) Nov. 9 - 13, ELK-3-041, 45, A, 13.

(42) Nov. 9 - 13, ELK-3-042, 200, MB, 15A.

(43) Nov. 9 - 13, ELK-3-043, 150, MB, 15B.

(44) Nov. 9 - 13, ELK-3-044, 110, A, 17.

(45) Nov. 16 - 20, ELK-3-045, 50, A, 45.

(46) [RESERVED]

(47) Nov. 30 - Dec. 4, ELK-3-047, 380, A, 15A.

(48) Nov. 30 - Dec. 4, ELK-3-048, 180, A, 15B.

(49) [RESERVED]

(50) Dec. 14 - 18, ELK-3-050, 45, A, 13.

(51) [RESERVED]

(52) Jan. 18-22, 2003, ELK-3-052, 380, A, 15A.

(53) Jan. 18-22, 2003, ELK-3-053, 165, A, 15B.

(54) Feb. 1 - 5, 2003, ELK-3-054, 250, A, 15A.

(55) Feb. 1 - 5, 2003, ELK-3-055, 165, A, 15B.

(56) Feb. 15 - 19, 2003, ELK-3-056, 45, A, 13.

(57) [RESERVED]

(58) [RESERVED]

(59) [RESERVED]

(60) Oct. 26 - 30, 2002, ELK-3-060, 10, MB, 6 B.

(61) Oct. 26 - 30, 2002, ELK-3-061, 5, A, 6 B.

(62) Oct. 05 - 09, 2002, ELK-3-062, 25, A, 15A. (Youth only, must provide hunter education certification number on application).

(63) Oct. 05 - 09, 2002, ELK-3-063, 15, A, 15B. (Youth only, must provide hunter education certification number on application).

(64) Nov. 30-Dec.04, 2002, ELK-3-064, 115 A, 17.

(65) Jan. 18- 22, 2003, ELK-3-065 115 A, 17.

(66) Oct. 19- 23, 2002, ELK-3-066 45 A, 13.

E. Public land elk hunts for handicapped hunters, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

(1) Sept. 28 - Oct. 2, ELK-4-001, 30, MB, 16A.

(2) Sept. 28 - Oct. 2, ELK-4-002, 40, A, 16A.

(3) Sept. 28 - Oct. 2, ELK-4-003, 30, MB, 16D.

(4) Sept. 28 - Oct. 2, ELK-4-004, 40, A, 16D.

(5) Sept. 28 - Oct. 2, ELK-4-005, 200, MB, 34.

(6) Nov. 16 - 20, ELK-4-006, 40, A, 2.

(7) Sept. 28 - Oct.2, ELK-4-007, 30, MB, 50.

(8) Sept. 28 - Oct.2, ELK-4-008, 30, A, 50.

(9) Nov. 09-11,2002 ELK-4-009, 25, A, 6B (Handicap).

F. The Director may allot private land elk licenses for use on those ranches whose owners or lessees sign a hunting agreement with the Department.

G. Private land elk hunts for ranches designated as "RANCH ONLY" shall be limited to the following season dates and weapon types: September 1-24, **BOW ONLY**, in units: 2, 4, 5A, 5B, 6A, 6C, 7, 9, 10, 12, 13, 14, 15A, 15B, 16A, 16B, 16C, 16D, 16E, 17, 18, 21A, 21B, 22A, 23, 24, 34, 36, 42, 44/45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55A, 55B, 56, 56A, 57, 58. **BOW or MUZZLELOADER:** September 28 through March 31 in units: 9 and 44/45 shall be limited to any consecutive 5 days. October 5 through March 31 in units 2, 6A, 6C, 7, 10, 13, 34, 36, 48, 52, and 53 shall be limited to any consecutive 5 days. October 12 through March 31 in units 17, 15A, and 15B shall be limited to any consecutive 5 days. **BOW, MUZZLELOADER or RIFLE:** September 28 through March 31 in units: 4, 41, 42, 46, 47, 54, 55A, 56, 57, and 58 shall be limited to any consecutive 5 days. October 5 through March 31 in units: 5A, 5B, 12, 21B, 22A, 23, 24, 43, 44/45, 49, 50, and 51 shall be limited to any consecutive 5 days. October 12 through March 31 in units: 2, 6A, 6C, 10, 16A, 16B, 16C, 16D, 16E, 21A, 34, 36, 52, and 53 shall be limited to any consecutive 5 days. October 19 through March 31 in unit 48 shall be limited to any consecutive 5 days. November 23 through March 31 in unit 9 shall be limited to any consecutive 5 days.

H. Unlimited private land, either-sex licenses valid for GMU's 41, 42, 43, and 55B shall be available over-the-counter or by mail, without deadline at all Department of Game and Fish offices; Season dates and weapon types shall be same as specified in section G in GMU 41,42,43 and section H-2 in GMU 55B.

(1) [RESERVED]

(2) Licenses issued for GMU 55B shall be limited to any 30 consecutive day period from April 1 through March 31. Any legal weapon for taking elk may be used during these hunts.

I. Numbers of private land licenses for qualifying ranches shall be available to the level listed for the Game Management Units and bag limits indicated below. For those ranches that do not qualify, private land ranch-only either-sex (ES) authorizations will be issued pursuant to 19.30.5.8 (M) NMAC. The bag limits shall be:

GMU MB-A, MB, A, and ES.

(1) 2, 0, 115, 80, 0.

(2) 4, 1080, 0, 1800, 0.

(3) 5A, 0, 250, 360, 0.

(4) 5B, 0, 190, 270, 0.

(5) 6A, 0, 60, 35, 0.

(6) 6C, 0, 125, 165, 0.

(7) 7, 0, 60, 195, 0.

(8) 9, 0, 300, 420, 0.

(9) 10, 0, 125, 155, 0.

(10) 15A, 0, 74, 211, 0.

(11) 15B, 0, 176, 332, 0.

(12) 16A, 0, 10, 13, 0.

(13) 16B, 0, 4, 1, 0.

(14) 16C, 0, 20, 22, 0.

(15) 16D, 0, 25, 77, 0.

(16) 16E, 0, 46, 139, 0.

(17) 17, 0, 17, 45, 0.

(18) 21A, 0, 3, 1, 0.

(19) 34, 0, 300, 300, 0.

(20) 36, 0, 100, 120, 0.

(21) 44/45, 0, 65, 25, 0.

(22) 46, 600, 0, 625, 0.

(23) 47, 50, 0, 50, 0.

(24) 48, 0, 215, 205, 0.

(25) 49, 0, 20, 10, 0.

(26) 50, 0, 65, 25, 0.

(27) 51, 0, 80, 60, 0.

(28) 52, 0, 70, 40, 0

(29) 53, 0, 165, 50, 0.

(30) 54, 300, 0, 500, 0.

(31) 55A, 2500, 0, 2200, 0.

(32) 56A, 100, 0, 100, 0.

(33) 56, 0, 10, 10, 0, these

shall be for the Sierra Grande portion only.

(34) 57, 400, 0, 800, 0.

(35) 58, 20, 0, 40, 0.

(36) 12, 0, 0, 50, 200.

(37) 21B, 0, 0, 15, 60.

(38) 22A, 0, 0, 5, 25.

(39) 23, 0, 0, 15, 100.

(40) 24, 0, 0, 35, 75.

(41) 13, 0, 0, 45, 125.

J. The Director may allot private land elk bow licenses for use on ranches in management whose owners or lessees sign a hunting agreement with the Department. The number of bow licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

(1) 57, ES, 2.

(2) 600, ES, 4.

(3) 67, ES, 5A.

(4) 144, ES, 5B.

(5) 31, ES, 6A.

(6) 92, ES, 6C.

(7) 20, ES, 7.

(8) 376, ES, 9.

(9) 63, ES, 10.

(10) 63, ES, 15A.

(11) 11, A, 15A.

(12) 183, ES, 15B.

(13) 24, A, 15B.

(14) 14, ES, 16A.

(15) 2, A, 16A.

(16) 4, ES, 16B.

(17) 0, A, 16B.

(18) 41, ES, 16C.

(19) 7, A, 16C.

(20) 39, ES, 16D.

(21) 7, A, 16D.

(22) 48, ES, 16E.

(23) 20, A, 16E.

(24) 16, ES, 17.

(25) 4, A, 17.

(26) 3, ES, 21A.

(27) 0, A, 21A.

(28) 200, ES, 34.

- (29) 55, ES, 36.
 (30) 25, ES, 44/45.
 (31) 100, ES, 46.
 (32) 10, ES, 47.
 (33) 230, ES, 48.
 (34) 5, ES, 49.
 (35) 35, ES, 50.
 (36) 25, ES, 51.
 (37) 40, ES, 52.
 (38) 75, ES, 53.
 (39) 300, ES, 54.
 (40) 700, ES, 55A.
 (41) 10, ES, 56A.
 (42) 0, ES, 56.
 (43) 100, ES, 57.
 (44) 10, ES, 58.
 (45) 25, ES, 12.
 (46) 45, ES, 13.
 (47) 30, ES, 18.
 (48) 35, ES, 21B.
 (49) 5, ES, 22A.
 (50) 40, ES, 23.
 (51) 25, ES, 24.

K. Elk Enhancement

Licenses. Elk enhancement licenses shall be valid from September 1 through December 31 for any legal weapon. These licenses shall be valid statewide only on public land where elk hunting is currently allowed, including the Department's Wildlife Management Areas and private land with prior written permission. Bag limit shall be one Mature Bull. The hunt code shall be ELK-1-280. License may be used either by the applicant or any individual of the selected applicant's choice through sale, barter, or gift.

L. Elk Incentive Authorizations.

(1) Distribution. Two (2) elk incentive authorizations will be distributed through a drawing that will include all prior year deer and elk hunters forwarding their harvest survey forms to the Department or its designated agent by the published deadline.

(2) Authorizations to purchase the license may be used either by the applicant or any individual of the selected applicant's choice through sale, barter, or gift.

(3) Elk incentive hunt shall be restricted to the Valle Vidal Unit of the Carson National Forest in Unit 55 during the first Mature Bull hunt after October 1st, using any legal weapon.

M. Valles Caldera National Preserve Licenses Distribution.

(1) 100 percent of the Mature Bull elk licenses allocated to Sub-Unit 6B for the 2002-2003 season shall be issued to the holders of Valles Caldera National Preserve access agreements.

(2) The holders of Valles Caldera National Preserve access agreements shall be identified by the Valles Caldera National Preserve Board of Trustees.

(3) Valles Caldera National Preserve Licenses shall be valid for one hunt in Sub-Unit 6B for which the bag limit is one mature bull elk as specified on the Valles Caldera National Preserve access agreement.

(4) The remaining available elk licenses allocated to Sub-Unit 6B shall be issued through the public draw.

[4-1-95, A, 8-15-95; R 3-14-98; Re-pr, 3-15-99, A, 12-31-99, A, 9-14-00; 19.31.8.24 NMAC – Rn & A, 19 NMAC 31.8.24, 3-14-2001; A, 08-15-2001; A, 12-28-01; A, 02-14-02]

19.31.8.29 ORYX (2002-2003):

A. Oryx hunts for firearms shall be as indicated below, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and areas open. The Director may change or cancel all hunts on military lands to accommodate closures on those lands; provided the season length and bag limit shall remain the same as assigned on original hunt code.

- (1) Sept. 7, ORX-1-800, 30 FM Stallion Range ~~{Gate}~~
 (2) Sept. 8, ORX-1-805, 30 FM Stallion Range ~~{Gate}~~
 (3) Sept. 21, ORX-1-810, 30 FM Tularosa Gate (Rhodes Canyon Hunt Area).
 (4) Sept. 22, ORX-1-815, 30 FM Tularosa Gate (Rhodes Canyon Hunt Area).
 (5) Oct. 5 ORX-1-820, 30 FM Small Missile Range ~~{Gate}~~
 (6) Oct. 6 ORX-1-825, 30 FM Small Missile Range ~~{Gate}~~
 (7) Nov. 23 ORX-1-830, 30 FM Oscura Gate (Red Canyon Hunt Area).
 (8) Nov. 24, ORX-1-835, 30 FM Oscura Gate (Red Canyon Hunt Area).
 (9) Dec. 14, ORX-1-840, 30 FM Stallion ~~{Gate}~~ Range
 (10) Dec. 15, ORX-1-845, 30 FM Stallion ~~{Gate}~~ Range
 (11) Dec. 27 ORX-1-721, 15 FM Tularosa Gate, (Rhodes Canyon Hunt Area). Youth Hunt, must provide hunter education certification number on application.
 (12) Dec. 28, ORX-1-850, 30 FM Tularosa Gate (Rhodes Canyon Hunt Area).
 (13) Dec. 29, ORX-1-400, 24 ES Tularosa Gate (Rhodes Canyon Hunt Area).
 (14) Dec. 29, ORX-1-600, 6 NT Tularosa Gate (Rhodes Canyon Hunt Area).
 (15) Jan. 11,2003 ORX-1-405, 24 ES Small Missile Range ~~{Gate}~~
 (16) Jan. 11,2003 ORX-1-605, 6 NT Small Missile Range ~~{Gate}~~
 (17) Jan. 12,2003 ORX-1-410, 24 ES Small Missile Range ~~{Gate}~~
 (18) Jan. 12,2003 ORX-1-610, 6 NT Small Missile Range ~~{Gate}~~
 (19) Jan. 25,2003 ORX-1-415, 24 ES Oscura Gate (Red Canyon Hunt Area).
 (20) Jan. 25,2003 ORX-1-615, 6 NT Oscura Gate (Red Canyon Hunt Area).
 (21) Jan. 26,2003 ORX-1-420, 24 ES Oscura Gate (Red Canyon Hunt Area).
 (22) Jan. 26,2003 ORX-1-620, 6 NT Oscura Gate (Red Canyon Hunt Area).
 (23) Jan. 31,2003 ORX-1-425, 24 ES Stallion Range ~~{Gate}~~
 (24) Jan. 31,2003 ORX-1-625, 6 NT Stallion Range ~~{Gate}~~
 (25) Feb. 1,2003 ORX-1-430, 24 ES Stallion Range ~~{Gate}~~
 (26) Feb. 1,2003 ORX-1-630, 6 NT Stallion Range ~~{Gate}~~
 (27) Feb. 2,2003 ORX-1-435, 24 ES Stallion Range ~~{Gate}~~
 (28) Feb. 2,2003 ORX-1-635, 6 NT Stallion Range ~~{Gate}~~
 (29) Feb. 15,2003 ORX-1-440, 24 ES Tularosa Gate (Rhodes Canyon Hunt Area).
 (30) Feb. 15,2003 ORX-1-640, 6 NT Tularosa Gate (Rhodes Canyon Hunt Area).
 (31) Feb. 16,2003 ORX-1-445, 24 ES Tularosa Gate (Rhodes Canyon Hunt Area).
 (32) Feb. 16,2003 ORX-1-645, 6 NT Tularosa Gate (Rhodes Canyon Hunt Area).
 (33) Feb. 28,2003 ORX-1-450, 24 ES Stallion Range ~~{Gate}~~
 (34) Feb. 28,2003 ORX-1-650, 6 NT Stallion Range ~~{Gate}~~
 (35) Mar. 1,2003 ORX-1-455, 24 ES Stallion Range ~~{Gate}~~
 (36) Mar. 1,2003 ORX-1-655, 6 NT Stallion Range ~~{Gate}~~
 (37) Mar. 2,2003 ORX-1-460, 24 ES Stallion Range ~~{Gate}~~
 (38) Mar. 2,2003 ORX-1-660, 6 NT Stallion Range ~~{Gate}~~
 (39) Mar. 15,2003 ORX-1-465, 24 ES Tularosa Gate (Rhodes Canyon Hunt Area).
 (40) Mar. 15,2003 ORX-1-665, 6 NT Tularosa Gate (Rhodes Canyon Hunt Area).
 (41) Mar. 16,2003 ORX-1-470, 24 ES Tularosa Gate (Rhodes Canyon Hunt Area).

Area).

(42) Mar. 16,2003 ORX-1-670, 6 NT Tularosa Gate (Rhodes Canyon Hunt Area).

B. [RESERVED].

C. Oryx Incentive Authorizations.

(1) Distribution. Five (5) oryx incentive authorizations will be distributed through a drawing that will include all prior year deer and elk hunters forwarding their harvest survey forms to the Department or its designated agent by the published deadline.

(2) Authorizations to purchase the license may be used either by the applicant or any individual of the selected applicant's choice through sale, barter, or gift.

(3) Oryx incentive hunts shall be any one (1) regular established oryx season (non-depredation) of the hunters choice. Bag limit shall be Either Sex with the legal weapon and hunt area that of the selected hunt.

D. The Director, at his discretion, may adjust the number of oryx licenses and hunt dates on White Sands Missile Range pending negotiations with White Sands Missile Range officials. Hunt dates may extend into future hunting seasons.

[4-1-95; R 3-14-98; Re-pr, 3-15-99; N, 12-31-99, A, 12-31-99; 19.31.8.29 NMAC – Rn & A, 19 NMAC 31.8.29, 3-14-2001; A, 12-28-01; A, 02-14-02]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an Amendment to 19.30.3 NMAC, Section 8. This regulation was also renumbered and reformatted to comply with current NMAC requirements.

19.30.3.8 OPEN MEETINGS:

A. Reasonable Notice:

Reasonable notice shall be given, as hereinafter provided, of all meetings defined as a quorum of the State Game Commission meeting for the purpose of discussing or adopting any proposed regulation, rule or resolution, or at which formal action will occur.

(1) Annual meeting to determine reasonable notice: The annual meeting to determine what is reasonable notice for meetings, as required by Section 10-15-1D, shall be held at the first Commission meeting each year. At that meeting, the Commission shall take action either to continue or amend its existing practice as contained herein.

(2) Notice of each regularly scheduled meeting and meetings at which rule makings may occur: At least 10 days in advance of each regularly scheduled meeting, notice will be sent to the major newspapers, radio stations, wire services and television stations in the state. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda may be obtained. The notices shall specify both the open and closed portions of the meeting pursuant to Section 10-15-1 of the "Open Meetings Act."

(3) Notice of each special meeting: At least three days in advance of each special meeting, notice will be sent to the major newspapers, radio stations, wire services and television stations in the state. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda may be obtained. The notices shall specify both the open and closed portions of the meeting pursuant to

Section 10-15-1 of the "Open Meetings Act."

(4) Notice of emergency meetings: Notwithstanding any other provision of this regulation, the Chairman of the State Game Commission may call on the Commission to consider any unforeseen and urgent matter that demands immediate Commission action. Notice in such emergency shall be given at least 24 hours in advance of such meeting and shall be by telephone to the Associated Press and, if time permits, via news release faxed or hand delivered to at least one daily newspaper of general circulation in the state.

(5) Telephone participation: Commissioners may choose to participate in properly noticed emergency meetings of the State Game Commission [~~during the legislative session to discuss legislative matters~~] by telephone or other similar communications equipment, but only when attendance in person is difficult or impossible. Each commissioner participating by telephone or other similar equipment must be identified when speaking, all commissioners must be able to hear each other at the same time and hear any speaker, and members of the public attending the meeting must be able to hear any commissioner.

B. Correspondence with Interested Parties: Prior to each regularly scheduled meeting, correspondence announcing the date, time, and place of the meeting, information on how a copy of the agenda may be obtained, and specifying both the open and closed portions of the meeting, shall be sent to agencies, organizations, groups, or individuals who have requested such notice.

C. Agenda Availability and Changes:

(1) Agenda availability: the agenda for each meeting will be made available to the public from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 at least 24 hours in advance of each meeting.

(2) The proposed agenda for any meeting is subject to change as deemed nec-

essary by the Chairman of the State Game Commission. However, such changes may not be made less than 24 hours in advance of any meeting, and the final agenda, incorporating any such changes, will be made available to the public at least 24 hours in advance of the meeting from the Office of the Director.

[12-17-75, 9-3-82, 12-3-87, 3-5-91, 8-15-95, 3-15-99, 2-14-00; 19.30.3.8 NMAC – Rn & A, 19 NMAC 30.3.8, 2-14-02]

**NEW MEXICO GAMING
CONTROL BOARD**

This is an amendment to 15.1.1.5 NMAC and 15.1.1.9 NMAC.

15.1.1.5 EFFECTIVE DATE: September 15, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].

15.1.1.9 PROCUREMENT BY THE BOARD OF PERSONAL PROPERTY VALUED IN EXCESS OF TWENTY THOUSAND DOLLARS (\$20,000): Pursuant to Section 60-2E-8(C)(17) of the Gaming Control Act, all procurement by the Board of personal property valued in excess of twenty thousand dollars (\$20,000) shall be made pursuant to General Services Department Regulations and published guidelines and the Procurement Code. Such procurement is also subject to the following:

A. Board Approval: All procurement approvals, awards and/or final decisions for personal property valued in excess of twenty thousand dollars (\$20,000) shall be made at duly-noticed open meetings of the Board unless the Board, at a duly-noticed open meeting, delegates [~~the~~] approval authority to the Executive Director.

B. Background Checks Required of Some Contractors: All contractors that have ties to current or likely gaming interests in New Mexico, including but not limited to, significant contractual relationships, ownership, parent-subsidary

relationships, holding company relationships, employment, and/or controlling interests shall be required, upon submission of a proposal, bid, or quote to furnish personal property in excess of twenty thousand dollars (\$20,000) in response to a procurement request or invitation by the Board, to submit to a background investigation including the completion of all required information on forms and/or complete responses to written and oral questions provided by the Department of Public Safety and/or the Board. At the Board's discretion, contractors covered by this subsection will not receive an award or final approval from the Board, or may be granted a conditional award or approval, until the background investigation is completed and the Board is satisfied that the contractor has the requisite moral character, financial and technical competency, and lack of criminal record necessary to meet the Board's procurement needs consistent with the Gaming Control Act and the public interest. The Board, in its discretion, may require any other contractors not tied to gaming interests and who propose to furnish personal property in excess of twenty thousand dollars (\$20,000) to submit to background investigations.

C. Refusal to Submit to Background Investigation Constitutes Automatic Disqualification: Any contractor that refuses to submit to a background check as provided in [s]Subsection B of 15.1.1.9[~~(B)~~] NMAC shall be automatically disqualified.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.5.5 NMAC, 15.1.5.6 NMAC, 15.1.5.7 NMAC, 15.1.5.10 NMAC, 15.1.5.11 NMAC, 15.1.5.13 NMAC, 15.1.5.15 NMAC, 15.1.5.16 NMAC, 15.1.5.17 NMAC, 15.1.5.21 NMAC, 15.1.5.22 NMAC, 15.1.5.23 NMAC, 15.1.5.24 NMAC, and 15.1.5.25 NMAC.

15.1.5.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section [or paragraph].

15.1.5.6 OBJECTIVE: This rule [is intended to] establishes standards and requirements for licensure, certification, registration, renewal, finding of suitability, and other approval under the Gaming Control Act.

15.1.5.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. "Act" means the New

Mexico Gaming Control Act.

B. "auxiliary member" means an individual who has qualified as an auxiliary member in accordance with the national and local charter, articles of incorporation, bylaws, or rules of an official auxiliary that is organized in accordance with the bylaws and regulations of a nonprofit organization gaming operator licensee or applicant and in accordance with federal Internal Revenue Code section 501(c)(19) or (23) and applicable regulations; "auxiliary member" does not include any other person or membership class whose participation in gaming activity would create taxable gaming income for the licensee or would threaten the licensee's tax exempt status.

C. "component" means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, [and] meter; and any other parts the Board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

D. "control," when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or licensee; when used as a verb, "control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

E. "key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose annual base compensation exceeds \$75,000.

F. "licensed premises" means the area of a structure, within the gaming establishment, that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines [; the licensed premises may consist of no more than two non-contiguous areas of the same structure].

G. "majority interest" means an ownership interest, whether direct or indirect, of more than 50% in the licensee.

H. "manage" means to take charge of, direct, superintend, restrict, regulate, administer, or oversee the operation of a gaming activity or other activity or function.

I. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes modifications to any gaming device for use or play in the State or for sale, lease or distribution outside the State from any location within the State.

J. "member" means an individual who has qualified for and been granted full membership in a nonprofit organization by swearing in, approval vote of the membership, or approval vote of a designated committee pursuant to the nonprofit organization's charter, articles of incorporation, bylaws, or rules, and who is in good standing.

K. "modification" means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs; "modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game; replacement of one component with another pre-approved component, or the rebuilding of a previously approved gaming machine with pre-approved components.

L. "person" means a legal entity or an individual.

M. "State" means the State of New Mexico.

N. "this title" means Title 15, Chapter 1 of the State Administrative Code.

15.1.5.10 APPLICATIONS, STATEMENTS, AND NOTICES—FORM AND GENERAL REQUIREMENTS:

A. Every application, statement, and notice required to be filed under the Act or this rule must be submitted on forms supplied or approved by the board and must contain such information and documents as specified.

B. The applicant must file with the application all supplemental forms provided by the board. Such forms require full disclosure of all details relative to the applicant's antecedents, immediate family, habits and character, criminal record, business activities, financial affairs and business associates for the ten-year period immediately preceding the filing date of the appli-

cation.

C. Upon request of the board, the applicant must further supplement any information provided in the application. The applicant must provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or this rule, the board may deny the application unless good cause is shown.

D. An applicant must submit evidence satisfactory to the board that the applicant is sufficiently capitalized to conduct the business proposed in the application. In determining whether an applicant is sufficiently capitalized, the board will consider such things as the applicant's annual financial statements and federal tax returns for the preceding three years, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately cover all existing and foreseeable obligations in the future.

E. All information required to be included in an application must be true and complete as of the date of board action sought by the applicant. If there is any change in the information contained in the application, the applicant must file a written amendment in accordance with this rule.

F. The application and any amendments must be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature must certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

G. The applicant must cooperate fully with the board and any agent of the board with respect to background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The board will examine the background, personal history, financial associations, character, record and reputation of the applicant, including an applicant seeking a finding of suitability, to the extent the board determines is necessary to evaluate the qualifications and suitability of the applicant.

H. The board will automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the Act and this rule.

I. Neither the State, the

board, any agency with which the board contracts to conduct background investigations, or the employees of any of the foregoing, may be held liable for any inaccurate information obtained through such an investigation.

~~J. The board may, in its discretion, obtain information from an applicant on a preliminary application form provided or approved by the board. No license will be issued based solely on information provided in a preliminary application, and an applicant who submits a preliminary application will be required to file a full application with the board. However, the applicant will not be required to submit any information that duplicates information previously submitted by the applicant in connection with its preliminary application.~~

15.1.5.11 SEPARATE APPLICATIONS REQUIRED; HOLDING OF MULTIPLE LICENSE TYPES PROHIBITED:

A. A licensee may not be issued more than one type of license. A licensee may not own a majority interest in, manage, or otherwise control a holder of another type of license issued pursuant to the provisions of the Act.

B. No affiliate or affiliated company may hold any type of license except the type held by the affiliated licensee unless the affiliate or affiliated company does not own a majority interest in, manage, or otherwise control the affiliated licensee and the board determines that such licensure will not unduly impair competition in the State gaming industry or otherwise be contrary to the public health, safety, morals, or general welfare.

~~C. [In the event an applicant or affiliate submits applications for more than one type of license, the board will accept for processing the application received first and will return any applications for a different type of license to the applicant or affiliate unless the first application has been withdrawn.]~~

~~D.] This rule is not intended to prohibit a gaming operator licensee from obtaining licensure of its gaming machines as required by the Act and this rule or from transferring or disposing of a gaming machine in accordance with this title.~~

15.1.5.13 SPECIAL REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE APPLICANTS

A. To qualify to hold and operate a gaming operator's license, a racetrack must be licensed by the State Racing Commission pursuant to the Horse Racing Act to conduct live horse races or simulcast

races.

B. The applicant must submit to the board ~~[, the initial application]~~ a copy of the applicant's current license from the Horse Racing Commission to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days [and live races] during its licensed race meets for the [1997 and 1998] current calendar year[s]. Thereafter, a licensee must submit to the board, within ten (10) days of issuance by the State Horse Racing Commission, a copy of the licensee's current license to conduct pari-mutuel wagering, its current simulcast license, and its schedule of live race days during its licensed race meets for the current calendar year. [Renewal applications must be accompanied by schedules of live race days and live races for the calendar years specified in the renewal application.]

C. Racetrack gaming operator licensees may permit the operation of gaming machines on their premises only on days when the racetrack is conducting live horse races or simulcasting horse race meets. The gaming machines may be played for a daily period not to exceed twelve hours at the licensee's discretion. "Daily period" means the 24-hour period beginning at 12:01 a.m. and ending at 12:00 midnight.

15.1.5.15 COMPULSIVE GAMBLING ASSISTANCE PLAN:

A. An applicant for a gaming operator's license must submit with the application a plan for assisting in the prevention, education, and treatment of compulsive gambling. The plan must include all information required in 15.1.18 NMAC.

B. No gaming operator's application will be approved unless the board first approves the applicant's compulsive gambling assistance plan.

C. Failure to implement the compulsive gambling assistance plan or to satisfactorily maintain and administer the plan once implemented will be grounds for suspension or revocation of the gaming operator's license, assessment of a fine, or both.

D. The board will establish minimum standards for the content, structure and implementation of, and periodic reporting requirements on, the [a] compulsive gambling assistance plan.

15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:

A. ~~[The Act requires or permits the board to require that certain persons who are directly or indirectly involved with licensees be found suitable to hold a gaming operator's license as long as that~~

~~involvement continues.] The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.~~

B. Pursuant to the Act, this rule constitutes a request and requirement by the Board that each key executive employed by a licensee submit an application of finding of suitability within 30 days of the first day of employment as a key executive.

C. The following persons are, or may be, subject to that requirement:

(1) any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming;

(2) any person who does business on the gaming establishment;

(3) any person who provides goods or services to a gaming operator licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

(4) an officer, director, equity security holder of 5% or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

(5) the key executives of a company licensee or company applicant ~~[-if requested by the board];~~

(6) if the applicant or licensee is or will be a subsidiary, the holder of 5% or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

(7) an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

(8) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 5% or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the State;

(9) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 10% or more of any class of voting securities in a publicly traded corporation certified by the board;

(10) the following members of a nonprofit organization gaming operator applicant or licensee: (a) the president or commander; (b) officers with check-writing authority or other financial responsibility; (c) board members; (d) key executives, such

as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and (e) any person who has access to the internal structure or software of any gaming machine or associated equipment; and

(11) any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

[B]D. A finding of suitability relates only to the involvement specified in the application. ~~[An applicant]~~ A key executive will be required to seek a new determination from the board within 30 days if there is any change in the nature of the involvement from that for which the ~~[applicant]~~ key executive was previously found suitable by the board.

[C]E. The board may waive the requirement for finding of suitability of a institutional investor unless the board determines that public policy requires that the institutional investor apply for such a finding.

[D]E. A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to paragraph[s] 8 of Subsection A of 15.1.5.16 ~~[(A)(8)]~~ NMAC or paragraph 9 of Subsection A of 15.1.5.16 ~~[(A)(9)]~~ NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

[E]G. In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

[F]H. The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

[G]I. Upon final determination by the board of the applicant's suitability, the board will issue a certification of such finding to the applicant.

[H]J. A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key execu-

tive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

K. An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the Act and this rule. The Board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

L. No person may be employed as a key executive who has failed to file an application for finding of suitability as required by this rule. A licensee will be subject to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if the licensee fails to ensure that the key executive has made the required application or employs as a key executive anyone who is required to file an application for finding of suitability but has failed to do so.

15.1.5.17 APPLICATION FOR WORK PERMIT:

A. Application for a work permit must be made, processed, and determined in the same manner as set forth in the Act or this rule for other applications. No person may be employed as a gaming employee unless the board has first approved the application for such a permit.

B. The applicant must submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. The fingerprints will not be accepted unless the fingerprints were taken under the supervision of, and certified by, a State Police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identification technician. The photographs must be no smaller than 2" x 3" and must be satisfactory to the board. The photographs also must have been taken no earlier than three months before the date the application for work permit was filed.

C. In addition to grounds for denial of an application described in the Act and this rule, the board may deny the application if the applicant has had a work permit revoked in any jurisdiction or has committed any act that is grounds for revocation of a work permit under the Act or this rule.

D. A work permit issued to a gaming employee must identify the manufacturer's, distributor's, or gaming operator's license under which the permit is issued and must have clearly imprinted on the permit a statement that the permit is valid for gaming purposes.

E. A work permit issued by the board is not an endorsement or clear-

ance by the board, but is merely verification that the individual has furnished his or her fingerprints and photograph to the board as required by this rule.

F. A work permit expires unless renewed in accordance with this title or if the employee is not employed as a gaming employee for more than 90 days.

G. A work permit is property of the State. Any gaming employee whose employment is terminated for any reason must surrender his or her work permit to the board upon termination.

H. Any otherwise qualified person may obtain a work permit to work as a gaming employee for a nonprofit gaming operator licensee and is not required to be a member of the nonprofit organization. A person holding a work permit may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

I. The holder of a work permit must submit an application for a new work permit if the employee changes employers and the new employer is an applicant or licensee of the board. The employee may not begin working for the new employer until the employee has obtained a new work permit.

15.1.5.21 APPLICATION FEES:

A. The applicant must pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

B. Applicants must submit the following nonrefundable fees with an application for licensure or other approval:

(1) manufacturer's license, \$10,000;

(2) distributor's license, \$5,000;

(3) gaming operator's license for racetrack, \$25,000;

(4) gaming operator's license for nonprofit organization, \$100;

(5) approval of application to install pre-approved modification to a licensed gaming machine filed by gaming operator licensee, \$25;

(6) gaming machine license, \$100 per machine;

(7) work permit, \$25;

(8) certification of finding of suitability, \$25 for each person requiring investigation; and

(9) approval of amended gaming operator license, \$50 for amended license due to addition or deletion of five or fewer machines; \$250 for all other amended licenses.

C. In addition to any non-refundable license or approval fee paid, the

applicant must pay all supplementary investigative fees and costs, as follows:

(1) an applicant for a manufacturer's license, distributor's license, or gaming operator's license for a racetrack must pay, in advance, an amount equal to the license fee as a deposit on fees and costs of the investigation. Upon completion of the investigation and determination of the actual fees and costs, the board will refund overpayments or charge the applicant for underpayments in an amount sufficient to reimburse the board for actual fees and costs;

(2) all other applicants must reimburse the board in an amount sufficient to cover actual fees and costs of the investigation upon completion of the investigation; and

(3) all applicants must fully reimburse the board within 30 days of receipt of notice of actual fees and costs incurred by the board for any underpayment or other amount owed by the applicant.

D. Investigative fees are charged at the rate of \$50 per hour for each hour spent by investigators of the board or the board's agents in conducting an investigation. In addition to fees, costs to be paid by the applicant include transportation, lodging, meals, and other expenses associated with traveling, which expenses will be reimbursed based on State mileage and per diem rules, and office expenses, document copying costs, and other reasonable expenses incurred. Checks must be made payable to the New Mexico Gaming Control Board.

E. In addition to any non-refundable application and supplementary investigation fees and costs, licensed manufacturers and distributors must pay a gaming device inspection fee in an amount not to exceed the actual cost of the inspection. The manufacturer or distributor must pay the estimated cost of the inspection in advance. Upon completion of the inspection and determination of the actual cost, the board will refund overpayments or charge the manufacturer or distributor for underpayments in an amount sufficient to reimburse the board for the actual cost. The manufacturer or distributor must fully reimburse the board within 30 days of receipt of notice of underpayment. Lab fees are charged at the rate of \$50 per hour for each hour spent by the board's technical personnel to inspect or test a gaming device.

F. The board ~~will not~~ may refuse to take final action on any application unless all license, approval, and investigation fees and costs have been paid in full. The board may deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant will be debarred from filing any other application with the board until all such fees and

costs are paid in full.

G. If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board will notify the applicant, in writing. The board will discontinue investigation and processing of the application and will issue a final, written order denying the application.

H. The maximum fee for processing any application will not exceed \$100,000, regardless of actual costs of supplemental investigations.

I. The board may contract with any State Board or agency to conduct any investigation required or permitted to be conducted under the Act or board regulations, as determined necessary by the board.

J. Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation ~~are~~ will be refundable ~~or waived~~ on the grounds that the ~~board denied the~~ application was denied or withdrawn or that processing was otherwise terminated.

15.1.5.22 DISCLOSURE OF GAMING CONTRACTS:

A. An applicant or a licensee must submit to the board copies of all written gaming contracts and summaries of all oral gaming contracts under which the contractor may receive, directly or indirectly, any compensation based on earnings, profits, receipts, or net take from gaming in the State. The board may review the contracts and require the applicant or licensee to modify the gaming contracts to conform to the provisions of the Act or this title. Failure to modify the contracts as required by the board will be grounds for denial of the application or for other action against the licensee.

B. Every person who is a party to any such contract with an applicant or a licensee must provide any information requested by the board, including filing an application for finding of suitability, if requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, reputation, and all other information requested by the board.

C. Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's gaming contract with any person who failed to provide the requested information.

15.1.5.23 CONDITIONS OF APPROVAL OF APPLICATION: The approval of any application or renewal of licensure is subject to the following conditions and constitutes the following agreements by the licensee:

A. The licensee will at all times make its gaming establishment or business premises available for inspection by the board or its authorized representatives, with or without prior announcement.

B. The licensee consents to the examination of all accounts, bank accounts, and records of, or under the control of, the licensee, an affiliate, or any entity in which the licensee has a direct or indirect controlling interest. Upon request of the board or its authorized representative, the licensee must authorize all third parties in possession or control of the requested documents to allow the board or representative to examine such documents.

C. The licensee accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of material or information supplied to the agency in connection with any application to the board.

D. With respect to new license applications, the licensee will commence the activity approved by the board within 90 days after the date of approval by the board on the application. Failure to commence the approved activity voids the board's approval, and the licensee must file a new application. The board, in its discretion, may waive the requirements of a new application. The licensee must make written application for waiver to the board within 30 days of the date the board's action on the original application becomes void.

E. The licensee will be responsible for all registration, taxation, and licensing imposed by the Act or other State law upon the license, gaming machine, or associated equipment. Nothing in this subsection shall be construed as authorizing the imposition of any license fee or tax in contravention of Section 60-2E-39 of the Act.

15.1.5.24 GROUNDS FOR DENIAL OF APPLICATION; CONDITIONAL LICENSES:

A. The board may deny an application on any grounds deemed reasonable by the board. Without limiting the foregoing, the board may deny the application on any of the following grounds:

(1) evidence of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the board or made in connection with any investigation, including the background investigation;

(2) conviction of any crime in any jurisdiction;

(3) conviction of any gambling offense in any jurisdiction;

(4) entry of a civil judgment against the applicant that is based, in whole or in part, on conduct that allegedly constituted a crime;

(5) direct or indirect association with persons or businesses of known criminal background or persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(6) any aspect of the applicant's past conduct, character, or behavior that the board determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(7) failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;

(8) failure to demonstrate adequate financing for the operation proposed in the application;

(9) failure to satisfy any requirement for application or to timely respond to any request by the board for additional information; [or]

(10) permanent suspension, revocation, denial or other limiting action on any gaming license issued by any jurisdiction; or

(11) approval of the application would otherwise be contrary to New Mexico law or public policy.

B. The board may issue a license subject to conditions deemed appropriate by the board. Such conditions may include the imposition of a probationary period, specific limitations on gaming activities permitted under the license, administrative fines, or such other terms as the board requires.

15.1.5.25 RESTRICTION ON REAPPLICATION [AFTER DENIAL]:

Any applicant whose application has been denied or whose license has been permanently suspended, revoked, or subjected to other limiting action in any jurisdiction may not reapply for licensing or approval by the board at any time.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.6.5 NMAC, 15.1.6.6 NMAC, 15.1.6.7 NMAC, 15.1.6.9 NMAC and 15.1.6.10.

15.1.6.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].

15.1.6.6 OBJECTIVE: This rule [~~is intended to~~] establishes standards and requirements for premises licensed for the conduct of gaming under the Gaming Control Act.

15.1.6.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. "Act" means the New Mexico Gaming Control Act.

B. "ATM" means a machine used for banking services, including withdrawals and deposits, balance inquiries, transfers, and other services; "ATM" includes credit card cash advance machines and other devices activated by debit or credit cards.

C. "licensed premises" means the area of a structure, within the gaming establishment, that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines [~~the licensed premises may consist of no more than two non-contiguous areas of the same structure~~].

15.1.6.9 AREA OF LICENSED PREMISES; RESTRICTIONS:

A. [~~The licensed premises may consist of no more than two non-contiguous areas.~~]

[B.] The area approved as the licensed premises must be clearly marked. No gaming shall be permitted outside of the licensed premises. All gaming devices must be located within the licensed premises and such other locations for the storage, display, repair and maintenance of the gaming devices as may be approved in advance by the board.

[C.] No license will be issued for any premises under construction.

[D.] No building may contain, and no area may constitute, a licensed premises for more than one licensee.

[E.] No area that is a premises licensed under the New Mexico Liquor Control Act may be designated as a licensed premises under the Act unless the area in which gaming is to be conducted is physically separated by a permanent physical structure from the area in which alcoholic beverages are sold, served, delivered, or consumed. Alcoholic beverages may not be sold, served, delivered, or consumed on the licensed premises.

15.1.6.10 OWNERSHIP OF PREMISES:

A. Any applicant or licensee who leases all or part of the licensed premises or proposed licensed premises must furnish the following information to the board within 30 days of the effective date of the lease:

- (1) name, address, and brief statement of the nature of business of the lessor of the premises;
- (2) brief description of the material terms of the lease;
- (3) copy of all documents by which the applicant has a right to possess the premises, including the lease;
- (4) statement describing any business relationships between the licensee or applicant and the lessor other than the lease; and
- (5) any other information required by the board.

B. Every person who is a party to any lease with an applicant or a licensee must provide any information requested by the board. Such information may include, but not be limited to, financial history, financial holdings, real and personal property ownership, interests in other companies, criminal history, personal history and associations, character, and reputation [~~and all other information requested by the board~~].

C. Failure to provide the information requested constitutes sufficient grounds for the board to deny the application or to require termination of the applicant's or licensee's lease with any person who failed to provide the requested information.

D. If the applicant or licensee owns all or part of the premises on which gaming is proposed to be conducted, the applicant or licensee must fully disclose to the board complete information about the interest held by any other person, including an interest held under any mortgage, deed of trust, bonds, or any other instrument, and all other information required by the board.

E. The licensee must furnish to the board complete information pertaining to any change in any premises lease or any change of ownership of, or interest in, the premises in which gaming is conducted within 30 days after the effective date of such change. [~~If the licensee is not a party to the transaction by which ownership of the premises changes, the licensee must notify the board of such change immediately upon acquiring notice of the change or of any proposed change of ownership.~~]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.11.5 NMAC. This rule was also renumbered to comply with NMAC requirements.

15.1.11.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.12.5 NMAC. This rule was also renumbered to comply with NMAC requirements.

15.1.12.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.14.5 NMAC and 15.1.14.19 NMAC.

15.1.14.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].

15.1.14.19 EX PARTE COMMUNICATIONS:

A. No party or representative of any other person may communicate off the record with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board may communicate off the record with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

C. Notwithstanding the provisions of [~~s~~]Subsections A and B of 15.1.14.19[(A) and (B)] NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as nonconfidential or information described as nonconfidential in board rule Subsection B of 15.1.2.8[(B)] NMAC is subject to the prohibition on ex parte communications.

D. Notwithstanding the provisions of [~~s~~]Subsections A and B of 15.1.14.19[(A) and (B)] NMAC, ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

E. Upon receipt of a communication knowingly made or caused to be

made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

F. This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the State; or

(2) any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.15.5 NMAC and 15.1.15.18 NMAC.

15.1.15.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].

15.1.15.18 EX PARTE COMMUNICATIONS:

A. No party or representative of any other person may communicate off the record, orally or in writing, with the hearing examiner or any board member except upon notice and opportunity to all parties to participate.

B. Neither the hearing examiner nor any member of the board may communicate off the record, orally or in writing, with any party or representative of any party in connection with any issue of fact or law related to a proceeding under this rule except upon notice and opportunity to all parties to communicate.

C. Notwithstanding the provisions of [~~s~~]Subsections A and B of 15.1.15.18[(A) and (B)] NMAC, a party may submit information to the board in confidence when such information is required by law or the rules of the board or required by a subpoena issued by the board to be made or transmitted to the board. However, information ruled by the board as nonconfidential or information described as nonconfidential in [~~s~~]Subsection B of 15.1.2.8[(B)] NMAC is subject to the prohibition on ex parte communications.

D. Notwithstanding the provisions of paragraphs [~~s~~]Subsections A and B of 15.1.15.18[(A) and (B)] NMAC,

ex parte communications are permitted, where circumstances require, for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if the board member or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a board member or hearing examiner in violation of this section, the board member or hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

F. This section does not preclude:

(1) the hearing examiner or any member of the board from consulting with board counsel concerning any matter before the board, except any matter relating to a proceeding in which board counsel is representing the State; or

(2) any party from conferring with the hearing examiner or board counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.20.5 NMAC, 15.1.20.8 NMAC and 15.1.20.12 NMAC.

15.1.20.5 EFFECTIVE DATE: April 30, 1999, unless a later date is cited at the end of a section [or paragraph].

15.1.20.8 BASIS FOR ISSUANCE OF AN EMERGENCY ORDER:

A. The board may issue, in accordance with this rule, an emergency order to do any one or more of the following:

(1) suspend, limit or condition a license, registration, finding of suitability or work permit; a fine may be imposed as a condition of continued operation of the license;

(2) take other action in relation to the licensee, including disabling gaming devices, ordering the licensee to cease all gaming activities or involvement in gaming activities, and stopping the movement of gaming devices;

(3) require a gaming operator licensee to exclude an individual licensee from the premises of the gaming operator licensee's gaming establishment; or

(4) require a gaming operator licensee not to pay an individual licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment.

B. The board may issue an emergency order only when the board believes that:

(1) a licensee has willfully failed to report, pay or truthfully account for and pay any fee imposed by the provisions of the Act or willfully attempted in any manner to evade or defeat any fee or payment of a fee;

(2) a licensee or gaming employee has cheated at a game; or

(3) the emergency order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

C. For purposes of [s]Subsection B of 15.1.20.8[~~(B) above~~] NMAC, failure to pay the gaming tax by the fifteenth of the month following the month in which the taxable event occurs constitutes willful failure to pay the gaming tax.

15.1.20.12 NONPAYMENT OF FEES; SUSPENSION OF GAMING LICENSE AND DISABLING OF GAMING MACHINES:

A. The board may suspend a gaming operator's license and disable gaming machines due to nonpayment of a fee owed by the gaming operator licensee.

B. If the overdue fee is the gaming tax, the board will contact the Taxation and Revenue Department by telephone, letter or e-mail to verify that the gaming operator licensee has not paid the overdue fee.

C. Following verification that the fee has not been paid, the board will provide to the gaming operator licensee written notice of the overdue fee. The written notice will include a demand for payment and will be sent by certified mail or personally delivered to the licensee.

D. The gaming operator licensee must pay the overdue fee in full and submit proof of payment satisfactory to the board within five days of receipt of the notice.

E. The board will issue an emergency order to suspend the gaming operator's license and to disable the gaming machines if the gaming operator licensee fails to submit to the board satisfactory proof of full payment of the fee as set forth above. The gaming operator's license will be suspended and the gaming machines will be disabled upon service of the emergency order on the gaming operator licensee.

F. Nothing in this [s]Section 15.1.20.12 NMAC shall be construed as prohibiting the board from taking

any other appropriate action in the emergency order in addition to suspending the gaming operator's license and disabling the gaming machines, including imposing a fine against the licensee as a condition of continued operation of the license.

G. In addition to issuance of an emergency order suspending the gaming operator's license and disabling the gaming machines, the board may initiate enforcement proceedings seeking to revoke, limit, condition or further suspend the license, or impose additional fines against the gaming operator licensee, or both.

H. Provided the gaming operator license has not been revoked, the board will issue an order to lift the suspension and enable the gaming machines upon proof satisfactory to the board that the gaming operator licensee has:

(1) paid the overdue fee in full;

(2) paid any fines or other fees assessed by the board or other agency in connection with the overdue fee;

(3) completed any period of suspension imposed on the license by the board; and

(4) complied with any and all other conditions imposed by the board.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.21.5 NMAC. This rule was also renumbered to comply with NMAC requirements.

15.1.21.5 EFFECTIVE DATE: April 30, 1999, unless a later date is cited at the end of a section [or paragraph].

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.24.5 NMAC.

15.1.24.5 EFFECTIVE DATE: May 31, 2000, unless a later date is cited at the end of a section [or paragraph].

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.3.5 NMAC and 15.1.3.6 NMAC. This rule was also renumbered to comply with NMAC requirements.

15.1.3.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section [or paragraph].

15.1.3.6 OBJECTIVE: This rule [is intended to] clarify [y] ies the role of the Gaming Control Board in promulgating

regulations and establish the scope and severability of such rules.

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.4.5 NMAC. This rule was also renumbered to comply with NMAC requirements.

15.1.4.5 EFFECTIVE DATE:
January 29, 1999, unless a later date is cited at the end of a section ~~for paragraph~~.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF REPEAL OF RULES FOOD STAMP PROGRAM

The Human Services Department has repealed 8.139.650 NMAC. Section 7, Definitions, and Section 8, Abbreviations & Acronyms have been moved to 8.139.100 NMAC.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.100 NMAC, Section 7.

8.102.100.7 DEFINITIONS A. Definitions A-L:

(1) **Application:** Means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(2) **Attendant:** Means an individual needed in the home for medical, housekeeping, or child care reasons.

(3) **Authorized Representative:** Means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

(4) **Basic Needs:** Include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(5) **Beginning Month:** Means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(6) **Benefit Group:** Means a pregnant woman or a group of people that includes a dependant child, all of that dependent child's full, half, step- or adopted siblings living with the dependant child's

parent or relative within the fifth degree of relationship and the parent with whom the children live.

(7) **Benefit Month:** Means the month for which cash assistance benefits have been issued. This term is synonymous with Issuance Month defined below.

(8) **Budget Month:** Means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(9) **Capital Gains:** Means proceeds from the sale of capital goods or equipment.

(10) **Cash Assistance:** Means cash payments funded by the Temporary Assistance for Needy Families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the General Assistance program.

(11) **Certification:** Means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(12) **Certification Period:** ~~Means process during which the individual has the opportunity to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the Department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department] Means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.~~

(13) **Collateral Contact:** Means an individual or agency designated by the benefit group to provide information concerning eligibility.

(14) **Conciliation Process:** Means a 30- day process during which the Department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the Department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the Department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

(15) **Date of Entry/Admission:** Means the date established by the Immigration and Naturalization Service as the date an alien (or sponsored alien) was admitted for permanent residence.

(16) **Department:** Means the Human Services Department.

(17) **Dependent Child:** Means a natural child, adopted child, stepchild or ward who is 17 years of age or younger or who is 18 and is enrolled in high school.

(18) **Director:** Means the director of the Income Support Division.

(19) **Diversion Payment:** Means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

(20) **Documentation:** Means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(21) **Earned Income:** Means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(22) **Education Works Program (EWP):** Provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the Education Works Cash Assistance Program.

(23) **Emancipated:** Means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

(24) **Encumbrance:** Means debt owed on property.

(25) **Equity Value:** Means the fair market value of property, less any encumbrances owed on the property.

(26) **Expedited Services:** The process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the FSP.

(27) **Fair Hearing:** An administrative proceeding which a claimant and/or his representative may request if:

(a) An application is not acted on within a reasonable time after the filing of the ~~application~~ application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

(28) **Fair Market Value (FMV):** Means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell

the vehicle for at retail.

(29) Federal Act: Means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(30) Federal Fiscal Year: October 1 through September 30 of the calendar year.

(31) Federal Poverty Guidelines: Means the level of income defining poverty by family size published annually in the Federal Register by the United States Department of Health and Human Services.

(32) Food Stamp Act: The Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

(33) General Assistance (GA) Benefit Group: Means a benefit group in which all members receive cash assistance financed by state or local funds.

(34) Government Entity: Includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

(35) Gross Income: The total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including Medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(36) Gross Income Test (85% Test): For the benefit group to be eligible, the gross earned income of the benefit group must be less than 85% of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

(37) Head of Household: The payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker.

(38) Immigrant: Means alien as defined in the federal act.

(39) Immigration and Naturalization Service (INS): A Division of the U.S. Department of Justice.

(40) Impairment: Means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical and/or psychiatric process. To evaluate physical and/or mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(41) Ineligible Alien: Means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

(42) Initial Month: Means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(43) Inquiry: Means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

(44) Institution of Higher Education: Means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(45) Institution of Post-Secondary Education: Means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

(46) Irrevocable Trust Funds: Means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(47) Issuance Month: Means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

B. Definitions M-Z:

(1) Medicaid: Medical Assistance under title XIX of the Social Security Act, as amended.

(2) Minor Unmarried Parents: Means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(3) Month of Approval: Means the month the action to approve a benefit group for cash assistance is taken.

(4)(3)(4) Net Income Tests: Means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(4)(5) Net Monthly Income: Means gross non-exempt income minus the

allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(5)(6) Non-Benefit Group Members: Means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(6)(7) Notice of Adverse Action (NOAA): Means a written notice that includes a statement of the action the Department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Participants have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(7)(8) Overissuance: Means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(8)(9) Parent: Means natural parent, adoptive parent, stepparent or legal guardian.

(9)(10) Participant: Means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

(10)(11) Payment Standard: Means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction and/or recoupment.

(11)(12) Permanent Total Disability: Means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

(12)(13) Person: Means an individual.

(13)(14) Project Area: Means the geographic area designated to a county office that is responsible for the administration of the Department's programs.

(14)(15) Prospective Budgeting: Means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(16) Quarterly Reporting:

Means a reporting requirement that allows a 12-month certification period and requires a benefit group to submit a report form every third month during the certification period.

[(45)](17) Real Property: Means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

[(46)](18) Recertification: Means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

[(47)](19) Recipient: Means a person receiving cash assistance benefits (same as a participant).

[(48)](20) Refugee: Means a lawfully admitted individual granted conditional entry into the United States.

[(21) Regular Reporting: Means a reporting requirement in which a benefit group is not required to meet Quarterly Reporting requirements, and must report changes within 10 days of the date the change becomes known.

[(49)](22) Resource Standard: Means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

[(20)](23) Retrospective Budgeting: Means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

[(24)](24) Resource Planning Session: Means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

[(22)](25) Secretary: Means the Secretary of the Department.

[(23)](26) Self-Employed: Means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

[(24)](27) Services: Means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

[(25)](28) Shelter for Battered Women and Children: Means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered

women and children.

[(26)](29) Single-Parent Benefit Group: Means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

[(27)](30) Sponsor: Means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

[(28)](31) Sponsored Alien: Means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

[(29)](32) Standard of Need: Means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

[(30)](33) State-Funded Alien Eligible: Means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

[(31)](34) Supplemental Security Income (SSI): Means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

[(32)](35) Temporary Total Disability: Means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

[(33)](36) Two-Parent Benefit Group: Means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

[(34)](37) Term Limits: Means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

[(35)](38) Unearned Income: Means Old Age, Survivors, and Disability Insurance payments (Social Security), Railroad Retirement benefits, Veterans

Administration Compensation or Pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; Worker's Compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

[(36)](39) Verification: Means the use of third-party information or documentation to establish the accuracy of statements on the application.

[(37)](40) Wage Subsidy Program: Means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC -N, 7/01/2001; A, 02/14/2002]

8.102.100.8 ABBREVIATIONS AND ACRONYMS

A. Abbreviations and Acronyms

(1) **AFDC:** Aid to Families with Dependent Children (replaced by TANF effective July 1, 1997)

(2) **ARSC:** Adult Residential Shelter Care Home

(3) **BG:** Benefit Group

(4) **BIA:** Bureau of Indian Affairs

(5) **BIA-GA:** Bureau of Indian Affairs-General Assistance

(6) **CA:** Cash Assistance

(7) **CE:** Categorical Eligibility or Categorically Eligible

(8) **CFR:** Code of Federal Regulations

(9) **CS:** Child Support

(10) **CSED:** (HSD) Child Support Enforcement Division

(11) **CYFD:** (New Mexico) Children Youth & Families Department

(12) **DOH:** (New Mexico) Department of Health

(13) **DOL:** Department of Labor

(14) **DOT:** Dictionary of Occupational Titles

(15) **E&T:** Employment and Training (Food Stamp Work Program)

(16) **EBT:** Electronic Benefit Transfer

(17) **EI:** Earned Income

(18) **EW:** Eligibility Worker (now FAA)

(19) **EWP:** Education Works Program

(20) **FAP:** Financial Assistance

Program
 (21) **FAA:** Family Assistance Analyst (formally ISS)
 (22) **FFY:** Federal Fiscal Year
 (23) **FMV:** Fair Market Value
 (24) **FNS:** Food and Nutrition Service (previously FCS)
 (25) **FPL:** Federal Poverty Level
 (26) **FSP:** Food Stamp Program
 (27) **GA:** General Assistance
 (28) **GED:** General Equivalency Degree
 (29) **HHS:** (U.S. Dept. of) Health and Human Services
 (30) **HSD:** (New Mexico) Human Services Department
 (31) **HUD:** (U.S. Dept. of) Housing and Urban Development
 (32) **IDA:** Individual Development Account
 (33) **INS:** (U.S.) Immigration and Naturalization Service
 (34) **IPV:** Intentional Program Violation
 (35) **IRP:** Individual Responsibility Plan
 (36) **IRU:** Incapacity Review Unit
 (37) **ISD:** (HSD) Income Support Division
 (38) **ISD2:** Integrated Services Delivery for ISD
 (39) **ISS:** Income Support Specialist (now FAA)
 (40) **JTPA:** Job Training Partnership Act (now WIA)
 (41) **LIHEAP:** Low Income Home Energy Assistance Program
 (42) **LITAP:** Low Income Telephone Assistance Program
 (43) **MAD:** (HSD) Medical Assistance Division
 (44) **MVD:** (New Mexico) Motor Vehicle Division
 (45) **NADA:** National Automobile Dealers Association
 (46) **NMAC:** New Mexico Administrative Code
 (47) **NMW:** New Mexico Works
 (48) **NOAA:** Notice of Adverse Action
 (49) **POS:** Point of Sale
 (50) **QC:** Quality Control
 (51) **QR:** Quarterly Reporting or Quarterly Reporters
 (52) **RR:** Regular Reporting or Regular Reporters
 (53) **RRP:** Refugee Resettlement Program
 (54) **SAVE:** Systematic Alien Verification for Entitlements
 (55) **SE:** Self Employment
 (56) **SSA:** Social Security Administration
 (57) **SSI:** Supplemental Security Income

(58) **SSN:** Social Security Number
 (59) **TANF:** Temporary Assistance to Needy Families (block grant program under Title IV-A of the Social Security Act)
 (60) **UCB:** Unemployment Compensation Benefits
 (61) **UEI:** Unearned Income
 (62) **USDA:** United States Department of Agriculture
 (63) **VA:** Veterans Administration
 (64) **WIA:** Workforce Investment Act
 (65) **WID:** Work Incentive Deduction
 (66) **WPA:** Work Participation Agreement
 B. [Reserved]
 [8.102.100.8 NMAC - N, 07/01/2001; A, 02/14/2002]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.102.110 NMAC, Sections 10, 11, and 13.

8.102.110.10 SUBMISSION OF THE APPLICATION FORM

A. Items Completed: To be accepted and registered, the cash assistance application, at a minimum, must identify the benefit group member applying, the program applied for, and have a signature of a responsible benefit group member or authorized representative.

B. Who Completes the Application: The application form must be completed by the applicant, the authorized representative, guardian, or another appropriate individual.

(1) Authorized representatives must be:

- (a) Designated in writing by the applicant/ head of household; and
- (b) Be an adult who has sufficient knowledge about the applicant/ benefit group's circumstances to complete the application form correctly.

(2) If an authorized representative or another appropriate individual completes an application form, the applicant must review and approve the completed form. The applicant is liable for improper payments resulting from erroneous information given by the authorized representative or another appropriate individual.

(3) The caseworker may assist in completing the form if there is no one else to help the applicant.

(4) **Application for Minor Children:** Application for cash assistance

for minor children, including unemancipated minor parents, must be made by the adult with whom the child resides and who is assuming responsibility for the support and care of the child.

(a) If a minor parent is living in a second-chance home, maternity home, or other adult-supervised supportive living arrangement, the application must be made by the supervising adult as the authorized representative for the minor parent.

(b) An emancipated minor may file an application in the emancipated minor's own right.

C. Signature:

(1) The application form must be signed by the applicant and authorized representative if one is designated.

(2) If an applicant receives help from someone other than a caseworker in completing the form, that individual must also sign at the bottom of the form.

(3) An individual who cannot sign the individual's own name must sign the application with a mark and have it witnessed. A mark, which is not witnessed, shall not be accepted as a valid signature. A caseworker may not witness signatures on an application the caseworker will be processing.

(4) If the application is made on behalf of a child, the form shall be signed by the relative or caretaker with whom the child is living, or by the authorized representative.

(5) If the individual, relative, or caretaker has a legally appointed guardian, the guardian must complete and sign the form.

D. Where Filed:

An application may be filed either in person or by mail with the ISD office in the project area serving the community or county where the applicant lives. If an applicant files the application with the incorrect project area, the applicant shall be referred to the correct project area. If the applicant wishes to complete an application that day, the project area shall accept the completed application, register it, and immediately transfer the form to the correct project area. If an application is mailed to the incorrect project area, that office shall register the application and immediately transfer the form to the correct project area.

E. Incomplete Applications:

If an application is incomplete, prompt action shall be taken to notify the applicant. The individual who completed the application form must add the missing or incorrect information and initial and date the entries. All reasonable action shall be taken by ISD to avoid any unnecessary delay of the applicant's eligibility determination.

F. Out-of-State

Applicants: An application mailed in from out of state shall be accepted, but shall not be registered until the applicant contacts ISD to confirm presence in the state. If the applicant does not contact the ISD within 30 days, the application shall be returned to the applicant.

G. Application

Registration: Completed and signed in-state applications shall be registered effective the date on which the application is received.

H. Tribal TANF

Programs: An application for NMW benefits received from an applicant residing in a Tribal TANF Service Delivery Area shall be accepted by ISD and registered as of the date the application was received.

(1) Effective upon implementation of a Tribal TANF program, the applicant shall be required to apply for the Tribal TANF Program in the Service Delivery Area in which the applicant resides.

(2) Prior to finalizing an application for NMW benefits received ~~from~~ from an applicant residing in a Tribal TANF Service Delivery Area, the applicant shall be informed ~~they~~ he or she must apply for Tribal TANF.

(a) The applicant shall be informed in writing that the applicant must provide verification of the disposition of the applicant's Tribal TANF application.

(b) The applicant shall be referred to the appropriate Tribal TANF project area serving the community or county in which the benefit group lives.

[8.102.110.10 NMAC - Rp 8.102.110.10 NMAC, 07/01/2001; A, 02/14/2002]

8.102.110.11 INTERVIEWS

A. Application

Interview: All applicants shall be interviewed in person at the local office or, when circumstances warrant, at another place reasonably accessible and agreeable to both the applicant and the caseworker. The applicant may bring any individual to the interview.

B. Office Interview

Waivers: Waiver of the requirement that the interview be conducted in the ISD office shall be determined on a case-by-case basis for any individual who is unable to appoint an authorized representative, has no one able to come to the office because of transportation difficulties, or similar hardships which the county office manager decides warrant a waiver of the office interview. These hardship conditions include, but are not limited to: illness, care of benefit group member, prolonged severe weather, or work hours which prevent an in-office interview during work hours.

C. Alternatives to Office

Interviews: If an office interview is waived, the caseworker shall conduct a tele-

phone interview or a home visit. Home visits shall be scheduled in advance with the benefit group as provided for at 8.100.180.17 NMAC. Waiver of the office interview in and of itself shall not be justification for extending the eligibility determination deadlines.

D. Scheduling

Interviews: An interview shall be scheduled upon receipt of the application. The interview shall take place within 10 working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

E. Missed Interviews:

If an applicant fails to appear for the first interview, the applicant shall be notified of the missed interview. The applicant shall be responsible for scheduling a second appointment. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall not be denied until the 30th day (or the next workday if the 30th is not a workday) after the application was filed.

F. Purpose and Scope of Interview

(1) Prior to approval there shall be a face to face interview with the applicant. The purpose and scope of the interview shall be explained to the applicant. The interview is an official and confidential discussion of benefit group circumstances between the applicant and the caseworker. It is intended to provide the applicant with information regarding the work program, child support benefits and requirements, the temporary nature of the program, eligibility requirements, and to provide the caseworker with the necessary facts to make an accurate eligibility determination. In addition, the interview allows the caseworker to explore and clarify unclear or incomplete information reported on the application.

(2) For cash assistance cases, at initial application, a brief history shall be required in the case narrative explaining the circumstances, which led to the application. The narrative shall include information clearly describing the child's situation with respect to child support from a non-custodial parent or parents.

G. Applicant

Information: During the course of the interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy. The interviewer shall tell the applicant about the following:

- (1) Services available and requirements which must be met under the cash assistance program and the Child Support Enforcement programs;
- (2) School Attendance and Reporting Requirements;
- (3) Complaint and hearing proce-

dures;

- (4) Work program procedures;
- (5) Work requirements;
- (6) Application processing standards;
- (7) Procedures in cases of overpayment or underpayment;
- (8) Responsibility to report changes;
- (9) Non-discrimination policy and procedures;
- (10) Timeliness standards[-]; and
- (11) Quarterly Reporting requirements.

[8.102.110.11 NMAC - Rp 8.102.110.11 NMAC, 07/01/2001; A, 02/14/2002]

8.102.110.13 DISPOSITION OF APPLICATION/NOTICE

A. Denials:

If an application is denied, ISD shall issue a written notice to the applicant of a denial. The denial notice shall include the date of denial, reason for denial, the regulation section under which the denial was made, the applicant's right to a fair hearing concerning the denial, and the time limits for filing a fair hearing request. The notice shall also explain that the applicant may discuss the decision with the caseworker, supervisor, or county director.

B. Approvals:

If the application is approved, the applicant shall be notified by mail. The notice shall report the initial month of ~~approval~~ eligibility, amount of payment, how the payment is calculated, and the members who have been determined eligible.

C. Application

Withdrawal: An applicant may voluntarily withdraw the application at any time before eligibility determination. An effort shall be made to confirm the applicant's desire to withdraw the application. Applicants shall be advised that withdrawal of the application has no effect upon the right to apply for assistance in the future.

D. Tribal TANF

Requirements:

(1) If an applicant fails to provided documentation of denial for Tribal TANF within thirty days, the NMW application shall be:

- (a) held for thirty days beginning with the day after the date of application.
- (b) denied on the thirtieth day or on the next working day if the thirtieth is not a workday.

(2) If the applicant provides documentation of denial for Tribal TANF within thirty days, ISD shall determine the cause for denial prior to processing the NMW application. Applicants who verify denial of Tribal TANF within thirty days shall be processed according to current NMW policy.

(a) An applicant denied Tribal TANF benefits for the following reasons shall be immediately denied NMW cash assistance:

(i) failure to provide information;

(ii) failure to cooperate with the application process;

(iii) failure to comply with any Tribal TANF non-financial eligibility criteria; or if

(iv) the benefit group is currently within a sanction period involving total benefit group ineligibility.

(b) Individuals qualifying for or receiving Tribal TANF benefits shall be denied NMW cash assistance.

[8.102.110.13 NMAC - Rp 8.102.110.13 NMAC, 07/01/2001; A, 02/14/2002]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.120 NMAC, Sections 9 and 11.

8.102.120.9 ELIGIBILITY REVIEWS

A. Follow-up Reviews:

(1) A follow-up review shall be scheduled during a certification period whenever information becomes known to the county office indicating a possible change in a benefit group's circumstances that may affect eligibility or payment amount.

(2) Review of a specific condition may be made by home visit, office visit, third party contacts or correspondence as needed.

(3) Circumstances which may require follow-up review include, but are not limited to:

(a) In NMW, exemption from work requirements;

(b) In GA, disability according to the recommendation of the physician or the IRU;

(c) School attendance of children age 6 or older;

(d) Any other anticipated change in circumstances which will require a change of grant during a certification period.

B. Recertification:

(1) Cash assistance shall be approved for a fixed certification period at the end of which the assistance shall be terminated.

(2) The ~~redetermination or recertification~~ recertification shall consist of a complete review of all conditions of eligibility; determination of eligibility for an additional period of time and redetermi-

nation of the amount of assistance payment. The recertification requires a redetermination of eligibility on those conditions that are subject to change. There shall be a prospective determination beginning the month following the month the certification expires.

(3) The caseworker shall ensure that CSED has been notified of all pertinent information regarding any non-custodial parent who has a child in the benefit group, including but not limited to the current address and work place of the non-custodial parent.

(4) **Conditions Not Subject to Change:** The caseworker reviews documentation of conditions not subject to change. If the record does not contain satisfactory evidence, additional verification shall be obtained.

(5) **Work Program:** The caseworker shall give information to the NMW recipients about earned income incentives, assistance through the Transitional Child Care program, Medicaid transitional benefits, and work program requirements, opportunities and services. Work program participation shall be reviewed.

(6) **Need and Payment Determination:** The caseworker shall obtain current information about family and benefit group income, resources, and circumstances, to determine financial need and amount of payment.

(7) **Change Reporting:** The caseworker shall review with the client the possible changes in circumstances which must be reported if they occur.

C. Certification Scheduling:

(1) Each case must have eligibility and payment reviewed at least once during the period specified for that category. Cash assistance cases, which also receive Food Stamps, shall be recertified at the same time the Food Stamp certification is completed.

(2) The certification ~~shall~~ period shall not exceed the following standards.

(a) **Regular Reporting Benefit Groups:** A benefit group not subject to Quarterly Reporting requirements shall be certified:

(i) every six months or less for: 002 - NMW, 005 - GA, 008 - GA, 009 - GA; ~~019 - RRP.~~

(ii) every 12 months ~~or less~~ for: 010 - State Supplement for SSI recipients in Residential Care.

(iii) eight months for: 019 - RRP.

(b) **Quarterly Reporting Benefit Groups:** Certification provisions that apply to a NMW benefit group subject to Quarterly Reporting are set forth at Subsection A of 8.102.120.11 NMAC.

(3) The caseworker shall have ~~full~~ discretion to make the certification period less than the maximum time interval, if changes in circumstances affecting eligibility are probable, family circumstances are questionable, when it is necessary in the interest of good caseload management, or to coincide with a Food Stamp certification.

D. Interview:

(1) A face-to-face interview between the caseworker and the specified relative/caretaker shall take place at least once a year in connection with a recertification, with the exception of Medicaid categories.

(2) The interview must be with the client himself, unless the client's physical or mental condition makes the interview impossible or inadvisable. See 8.100.130 NMAC for instructions on obtaining information.

(3) To help a client report changes that may affect the client's eligibility or amount of payment, the caseworker shall make available a change report form upon request, which the client may use to notify the county office of changes in circumstance.

E. Scheduling

Recertification Reviews: The certification period end date shall be scheduled for the appropriate interval indicated in Subsection C of 8.102.120.9 NMAC, starting with the initial month of ~~approval~~ eligibility, or the month following the month in which previous certification expired.

F. Exchange of Information with SSA:

(1) If information received during any eligibility review indicates that a recipient of NMW or GA may be eligible for Supplemental Security Income (SSI) benefits, (this includes children and adults who appear disabled, and needy adults over 65), the caseworker shall promptly refer the recipient to the Social Security Administration district office for application. An individual found eligible for SSI must participate in that program.

(2) During the review process, the caseworker will sometimes learn information relevant to the eligibility of a family member who is a SSI recipient. If there is a clear indication that a SSI recipient's countable income exceeds the maximum allowable under the SSI program, the discrepancy shall be reported to the Social Security Administration (SSA) District Office. SSA shall also be notified when it appears that the resources of an SSI recipient exceed SSI program standards.

[8.102.120.9 NMAC - Rp 8.102.120.9 NMAC, 07/01/2001; A, 02/14/2002]

8.102.120.11 QUARTERLY REPORTING: Quarterly Reporting is a

reporting requirement for certain benefit groups that receive NMW cash assistance.

A. Certification Period:

A benefit group subject to Quarterly Reporting:

(1) Shall be assigned a 12-month certification period or a certification period to match the Food Stamp certification period if less than 12 months.

(2) Shall remain subject to Quarterly Reporting throughout the certification period.

B. Quarterly Reporting Benefit Groups:

The Quarterly Reporting requirements shall apply to a benefit group:

(1) with earned income;

(2) with a recent history of earned income, defined as:

(a) a member who has had employment in the past 6 months; or

(b) a member who is currently receiving Unemployment Compensation Benefits.

(3) subject to Quarterly Reporting requirements in the Food Stamp Program.

C. Benefit Groups Excluded from Quarterly Reporting:

The Quarterly Reporting Requirements shall not apply to:

(1) a migrant and seasonal farm worker benefit groups;

(2) a benefit group in which all members are homeless;

(3) a benefit group with no earned income or no recent history of earned income; and

(4) a benefit group whose only income is from self-employment.

D. Transition to/from Quarterly Reporting:

(1) A household shall be transitioned to or from the Quarterly Reporting requirement at application or recertification.

(2) A household whose status changes to Quarterly Reporting because of a change in household composition shall be transitioned to Quarterly Reporting effective the month following the month the change is reported.

(a) A household whose certification period is less than 12 months at the time the household's status changes to Quarterly Reporting shall be assigned a 12-month certification period beginning with the first month of the previous certification period. The household shall be subject to Quarterly Reporting for the remainder of the certification period.

(b) A household whose certification period is for longer than 12 months at the time the household's status changes to Quarterly Reporting shall be subject to Quarterly Reporting for the remainder of the assigned certification period.

E. Quarterly Reporting

Requirement: The benefit group shall be required to report at intervals set forth in Subsection G of 8.102.120.11 NMAC and verify:

(1) a change in benefit group composition, whether a member has moved in or out of the home, and the date the change took place;

(2) money from employment;

(3) unearned income;

(4) purchase of a vehicle;

(5) opening of a savings or checking account;

(6) resources which exceed the \$1500 liquid or \$2000 non-liquid resource limit;

(7) dependent care expense; and

(8) change in residence.

F. Budgeting

Methodology for Quarterly Reporting:

(1) Initial Application:

Prospective budgeting shall be used for an applicant benefit group at initial application and at recertification as set forth at 8.102.500.9 NMAC.

(2) Prospective Budgeting:

(a) Methodology for determining eligibility and payment for processing a Quarterly Report is specified in this Subsection.

(b) Eligibility for cash assistance programs is determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition.

(c) Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

(3) Changes in Benefit Group Composition: A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

(4) Anticipating Income: In determining the benefit group's eligibility and payment amount, the income already received and any income a benefit group expects to receive during the certification period shall be used.

(a) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(b) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(c) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(d) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(e) Averaging is used to deter-

mine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

(5) Earned Income:

(a) Income from the month prior to the month the Quarterly Report is due shall be used to project monthly income, provided that the income is expected to continue.

(i) If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used.

(ii) If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(b) None of the methods described above may give the most accurate estimate of monthly earnings due to unique circumstances which may occur. In such cases, the caseworker shall use whatever method gives the most accurate estimate of earnings.

(c) An income projection shall be considered valid for the period between when Quarterly Reports are due.

(6) Income Received Less Frequently than Monthly: The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

(7) Contract Income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis. Contract income that is annualized shall only be verified when a new contract is established.

(8) Using Exact Income: Exact income, rather than averaged income, shall be used if income is received more frequently than weekly.

(9) Self-Employment:

(a) Determination of self-employment income is set forth at 8.102.520.11 NMAC and Subsection B of 8.102.520.12 NMAC. Verification standards for business and self-employment income are set forth at Paragraph (2) of Subsection B of 8.100.130.14 NMAC.

(b) A benefit group subject to Quarterly Reporting requirements and a member's self-employment is annualized, shall not be required to report changes in the

self-employment income. Only the income received from other sources shall be subject to Quarterly Reporting requirements as set forth in this section.

(c) If significant changes have occurred because of a substantial increase or decrease in business such that averaged income will not accurately reflect the self-employed individuals' income, the self-employment income shall be calculated on the basis of anticipated, not prior, earnings.

(d) A benefit group subject to Quarterly Reporting Requirements and the self-employment is not annualized shall be subject to reporting self-employment income on the Quarterly Report.

(i) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year.

(ii) If the self-employment enterprise has been in operation for such a short time that there is insufficient information to make a reasonable projection, the benefit group shall be required to report income at shorter intervals until there is enough information to make a longer projection of anticipated income.

(iii) **Seasonal Income:** Self-employment income that is intended to meet the benefit group's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

(e) **Determining Monthly Business or Self-Employment Income:** For the period of time over which self-employment income is averaged, the individual's monthly self-employment income is determined by adding all self-employment income, including capital gains, and excluding allowable costs of producing the self-employment income, and dividing the resulting self-employment income by the number of months over which the income will be averaged.

(f) Benefit groups who fail to provide verification of an allowable deduction with the Quarterly Report shall not be allowed the deduction. The caseworker shall process the report if all mandatory verification has been provided.

(10) **Unearned Income:** For purposes of anticipating future income, unearned income from the month prior to the month the report is due shall be used, provided that the income is expected to continue.

(11) **Use of Conversion Factors:** Conversion factors shall be used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equal-

ly for the months in the certification period or the Quarterly Reporting period.

(a) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.

(b) Income received weekly shall be multiplied by 4.3.

(c) Income received biweekly shall be multiplied by 2.15.

(12) **Rounding of Income When Using Conversion Factors:** Averaged income shall be rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

G. Time Limits for Submission and Processing a Quarterly Report

(1) The first month of the Quarterly Report period shall begin in the month of approval or the first month of the certification period.

(2) The Quarterly Report form shall be mailed to the benefit group in the month prior to the date the report is due. A cash assistance benefit group also receiving Food Stamps subject to the Quarterly Reporting requirement in the Food Stamp Program shall be assigned a Quarterly Reporting period coinciding with the Quarterly Reporting time periods established in the Food Stamp Program.

(3) A benefit group shall be required to return a completed Quarterly Report by the fifth calendar day of the month the Quarterly Report is due. If the fifth calendar day falls on a weekend or holiday the Quarterly Report shall be due the next working day.

(a) The first cash assistance Quarterly Report shall be due the earlier of:

(i) the second month following the month of approval; or

(ii) at the same time the next Quarterly Report is due in the Food Stamp Program for combined CA and FS households.

(b) A benefit group shall be required to submit a Quarterly Report:

(i) by the fifth calendar day of a month a Quarterly Report is due; and

(ii) every three months thereafter for the duration of the certification period.

(4) The caseworker shall review the Quarterly Report and verification for completeness within 10 days of receipt of a Quarterly Report form:

(a) If the form is complete and all verification provided to process the Quarterly Report form, the caseworker shall complete the processing of the form within 10 days of receipt.

(b) If the form is incomplete, lacking verification, or questionable verifi-

cation is provided, the caseworker shall notify the benefit group in writing of what needs to be completed or verification which needs to be provided.

(i) A Quarterly Report form that is incomplete or not signed shall be returned to the benefit group for completion.

(ii) A Quarterly Report form that is complete, but is lacking sufficient verification to process, shall be maintained in the case file and written notification sent to the benefit group of the verification needed to process the report.

(5) A notice shall be issued to the benefit group by the 20th day of the month in which a report is due, to notify the benefit group that a completed Quarterly Report has not been received by the benefit group.

(6) Benefit groups who fail to submit a complete Quarterly Report form by the end of the month in which it is due, shall be issued an adequate notice of closure.

H. Form Requirements for Quarterly Reporting: The Quarterly Report form shall specify:

(1) the date by which the benefit group must submit the form for continued receipt of timely benefits;

(2) the consequences of submitting a late or incomplete form;

(3) that verification must be submitted with the Quarterly Report;

(4) where to call for help in completing the form; and

(5) consequences for providing incorrect information.

I. Reporting Requirements Between Quarterly Reports:

(1) A Quarterly Reporting benefit group shall not be required to report changes subject to the Quarterly Reporting requirement as found in Subsection D of 8.102.120.11 NMAC prior to the date the Quarterly Report form is due or during the period in between Quarterly Reports. These include:

(a) a change in benefit group composition, whether a member has moved in or out of the home, and the date the change took place;

(b) money from employment;

(c) unearned income;

(d) purchase of a vehicle;

(e) opening of a savings or checking account;

(f) resources which exceed the \$1500 liquid or \$2000 non-liquid resource limit;

(g) dependent care expense; and

(h) change in residence.

(2) Changes reported prior to receipt of the Quarterly Report, shall be processed according to change processing requirements as found in 8.102.630 NMAC.

(3) A benefit group shall be required to timely report certain changes not subject to the Quarterly Reporting requirement include, but are not limited to:

(a) school attendance for dependent children;

(b) work participation requirements; and

(c) Social Security Number.

J. Non-Reporting

Sanctions: A benefit group subject to Quarterly Reporting shall be subject to a non-reporting sanction in accordance to the guidelines in 8.102.620.11 NMAC for failure to provide accurate change information on the Quarterly Report form or failure to report changes timely not subject to Quarterly Reporting requirements. Changes not subject to Quarterly Reporting requirements that must be reported timely include, but are not limited to:

(1) Social Security Number: A benefit group must report when one of its members is assigned a Social Security Number within 10 days.

(2) School Attendance: A parent in the benefit group must report when a dependent child age six years or older drops out of school or has three unexcused absences. This information must be reported within 14 days of the date the change occurs.

[8.102.120.11 NMAC – N, 02/14/2002]

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

This is an amendment to 8.102.460 NMAC, Sections 9 and 12.

8.102.460.9 PROGRAM ACTIVITIES: Sections 8.102.460.21 NMAC through 8.102.460.29 NMAC describe the various work program activities in which individuals may participate. An individual may participate ~~actively~~ in multiple work program activities at the same time or one after the other. Except as otherwise noted, the activities and procedures described in ~~this section~~ 8.102.460 NMAC apply to both NMW and Food Stamp participants. The activities to be completed during the certification period are identified in a Work Participation Agreement by the participant and approved by ISD.

[8.102.460.9 NMAC - Rp 8.102.460.9 NMAC, 07/01/2001; A, 02/14/2002]

8.102.460.12 NMW PARTICIPATION REQUIREMENTS

A. Participation requirements apply to each benefit group member whether the benefit group is considered to be a two-parent or single-parent benefit

group. ~~[Each person who is]~~ An individual subject to work participation must meet the applicable primary and total work activity requirements set forth in this section and must timely meet requirements with respect to the Assessment, the Individual Responsibility Plan (IRP), submittal and approval of a Work Participation Agreement (WPA), ~~and~~ work activities, and timely reporting of attendance in work activities as follows:

(1) Assessment: The assessment shall be completed and verification received by ISD within 15 days of application approval, or following the day of the assessment appointment as described under good cause in Subsection C of 8.102.460.15 NMAC. Except as allowed for in 8.102.460.15 NMAC, failure to verify completion of the assessment subjects the benefit group to payment sanctioning.

(2) Individual Responsibility Plan: The completed plan in accordance with 8.102.460.16 NMAC must be signed and the plan received by ISD no later than 60 days from the date of approval of assistance. Failure to complete and sign the IRP subjects the benefit group to payment sanctioning.

(3) Work Participation Agreement: The WPA shall be provided to ISD in accordance with the provisions 8.102.460.17 NMAC. Failure to have an approved agreement no later than 60 days from the date of approval of assistance subjects the benefit group to payment sanctioning.

(4) Work Activities: The participant must be engaged in and meet applicable participation requirements, in accordance with the WPA, by no later than the end of the third month following approval.

(5) Reporting Attendance: Participation in work activities for a month shall be reported to ISD no later than the fifth day of the following month. The first participation report shall be received by ISD no later than the fifth calendar day of the fourth month following the month of approval. Failure to meet participation requirements or to timely report ~~them~~ attendance each month may subject[s] the benefit group to payment sanctioning.

B. Waiver Termination: The time and activity schedule ~~is also~~ shall be applicable to ~~persons~~ an individual whose work program participation has been waived for a period of time but who has become ineligible for the waiver. For those individuals, the base month is the month in which the individual becomes subject to participation, rather than the month of approval ~~month~~.

C. Reopened Cases:
(1) An individual who has been approved for benefits with less than a

~~[twelve (12)] 12-month break in certification shall be required: [to be engaged in and meet all applicable participation requirements by the end of the month following the month of approval.]~~

(a) to submit a revised WPA within 15 days of approval;

(b) to be engaged in an allowable work activity as specified on the participant's WPA at the participation standard specified in 8.102.460.13 NMAC within 15 days of approval; and

(c) to submit the participation report to ISD no later than the fifth calendar day of the month following the month in which the 15-day time limit expires. The participant shall not be required to meet the participation standard for the 15-day period described in (a) and (b) above.

(2) An individual who fails to meet participation requirements or to timely report work activity attendance each month may subject the benefit group to payment sanctioning.

(3) An individual who has had more than a 12-month break in benefits ~~[sanction]~~ shall be required to meet all the steps identified in Subsection A of 8.102.460.12 NMAC.

[8.102.460.12 NMAC - Rp 8.102.460.11.A-C NMAC, 07/01/2001; A, 02/14/2002]

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

This is an amendment to 8.102.500 NMAC, Section 9.

8.102.500.9 PROSPECTIVE BUDGETING

A. Eligibility for cash assistance programs ~~[is]~~ shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

B. Quarterly Reporting: A benefit group subject to Quarterly Reporting shall be subject to income methodology as specified in Subsection F of 8.102.120.11 NMAC.

C. Changes in Benefit Group Composition: A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

D. Anticipating Income: In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification

period shall be used.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

E. Income Received Less Frequently than Monthly: The amount of monthly gross income that is received less frequently than monthly is determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

F. Contract Income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

G. Using Exact Income: Exact income, rather than averaged income, shall be used if:

(1) The benefit group has chosen not to average income;

(2) Income is from a source terminated in the month of application;

(3) Employment began in the application month and the income represents only a partial month;

(4) Income is received more frequently than weekly.

H. Income Projection - Earned Income:

(1) Income from the four-week period prior to the date of interview is used to project monthly income, provided that the income is expected to continue. If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used. If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(2) None of the methods described above may give the most accurate estimate of monthly earnings due to unique circumstances which may occur. In such cases, use whatever method gives the most accurate estimate of earnings.

(3) An income projection shall be considered valid for the certification period.

I. Unearned Income:

For purposes of anticipating future income, unearned income from the four-week period prior to the date of interview shall be used, provided that the income is expected to continue.

J. Use of Conversion

Factors: Conversion factors are used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equally for the months in the certification period or the Quarterly Reporting period.

(1) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.

(2) Income received weekly is multiplied by 4.3.

(3) Income received biweekly is multiplied by 2.15.

K. Rounding of Income

When Using Conversion Factors: Averaged income is rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount is rounded up to the next higher dollar. [8.102.500.9 NMAC - Rp 8.102.500.9 NMAC, 07/01/2001; A, 02/14/2002]

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

This is an amendment to 8.102.520 NMAC, Section 12.

8.102.520.12 EARNED INCOME DEDUCTIONS

A. Earnings Deductions:

Deductions from gross earned income shall be made in determining the net countable earned income of benefit group members.

(1) Earned income deductions may not exceed the amount of an individual's gross earned income.

(2) The earned income deductions may not be used to reduce unearned income, nor may deductions that are not used by one benefit group member be allocated against the earnings of another benefit group member.

(3) An allowable deduction that is not verified at the time of certification or processing of the Quarterly Report shall not

be allowed as a deduction from earned income. A deduction verified after certification or processing of the Quarterly Report shall be processed as a change.

B. Business Expenses and Self-Employment Costs: Business expenses and self-employment costs shall be deducted from the gross earnings of a self-employed benefit group member. The income after all allowable business expenses and self-employment costs shall be counted as the gross income of the benefit group member. To be eligible for this expense a Tax ID shall be required.

(1) **Allowable Expenses and Costs:** Allowable costs of producing self-employment income include, but are not limited to:

(a) Costs of materials and supplies;

(b) Business travel, but not personal commuting expenses, calculated at \$.25 per mile, unless the self-employed individual can prove that the actual expense is greater;

(c) Business taxes, including occupational taxes, gross receipts taxes, property taxes on a place of business other than the home, and business licenses.

(d) Rental of equipment, tools, and machinery;

(e) Rent expense for the place of business, except for the place of business when the individual operates the business out of the individual's residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines.

(f) Payments on the principal of the purchase price of income producing real estate and capital assets, machinery, equipment and other durable goods;

(g) Interest paid to purchase income producing property.

(2) **Expenses and Costs Not Allowed:**

(a) Costs for depreciation, personal business, entertainment expenses, personal transportation to and from work.

(b) Expenses or costs of self-employment that are reimbursed by other agencies cannot also be claimed as costs of self-employment, such as but not limited to, reimbursements made through USDA to individuals who provide home child care.

(3) Expenses or costs that exceed self-employment income shall not be deducted from other income.

C. Excess Hours Work Deduction:

(1) To qualify for the excess hours work deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live

in the home, or the legal spouse of such parent or caretaker relative.

(2) Time Limit for Allowing the Deduction: The excess hours work deduction is allowed for the first 24 months of receipt of NMW cash assistance. The 24 month period begins with and includes April 1998 and includes each month thereafter in which the individual is a member of a NMW benefit group receiving cash assistance or services. Months in which an individual is not a member of an NMW benefit group receiving cash assistance or services shall not add to the count of months for this deduction.

(3) For the excess hours deduction only, in determining the number of hours worked, only those hours spent in paid employment are counted.

(4) To determine the number of hours worked when the person is self-employed, the monthly gross earnings are divided by the minimum wage. The amount of the excess hours work deduction shall be calculated using minimum wage.

(5) Single-Parent Benefit Group: For the first 24 months of receiving cash assistance or services, if an individual works over the participation standard set by the Department pursuant to the New Mexico Works Act, all the income earned by the individual beyond the participation standard shall be excluded.

(6) Two-Parent Benefit Group: For the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over 35 hours per week and the other parent works over 24 hours per week, all the income earned by each parent beyond the participation standard set by the Department shall be excluded.

(a) In determining the number of excess hours, the 35-hour per week requirement shall be applied to the person with the larger number of hours of work and the 24-hour per week requirement shall be applied to the person with the smaller number of hours.

(b) With respect to a two-parent benefit group in which only one parent is subject to work program participation and is employed, the excess hours deduction shall be allowed for work hours in excess of 35 hours per week.

(7) Other adults included in a single-parent or two-parent benefit group shall be allowed the excess hours work deduction based on single parent provisions.

D. Work Incentive Deduction:

(1) To qualify for the work incentive deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in

the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.

(2) Allowing the Deduction: The work incentive deduction is allowed with no time limit as follows:

(a) \$125 and one-half of the remainder for the parent in a single-parent benefit group;

(b) \$225 and one-half of the remainder for each parent in a two-parent group;

(c) \$125 for and one-half of the remainder for a benefit group member in a single-parent or two-parent benefit group who is not a parent; and

(d) \$125 for a non-benefit group members whose income is deemed available.

E. Child Care Costs: Out of pocket expenses for child care that is necessary due to employment of a benefit group member shall be allowed.

(1) From earnings remaining after allowing the excess hours and work incentive deductions, deduct an amount not to exceed \$200 per month for a child under age two and \$175 per month for a child age two or older.

(2) If more than one parent is working, costs of child care shall be allocated to maximize the available deduction to the benefit group.

(3) The total amount deducted per child, regardless of the number of benefit group members who are employed, shall not exceed the applicable limits set forth above.

F. Contributions Made into Approved Individual Development Accounts:

The actual amount contributed into an approved IDA from an employed benefit group member's earnings shall be an allowable deduction from earned income. [8.102.520.12 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001; A, 02/14/2002]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.620 NMAC, Sections 10 and 11.

8.102.620.10 CHILD SUPPORT AND WORK PROGRAM NON-COOPERATION PAYMENT SANCTIONS

A. General:

(1) Failure by a benefit group member to meet work program participation requirements or failure by the adult responsible for children included in a benefit group to meet child support cooperation requirements, shall result in a payment reduction[s] of 25% for the first occurrence,

50% for the second occurrence and case closure for the third occurrence. Cases closed due to sanctioning are ineligible for a period of six months.

(a) Prior to imposition of the first sanction, the individual shall be given the opportunity to meet requirements or to have them waived for good cause through a conciliation process. If the individual does not agree to cooperate by the end of the conciliation period, a payment sanction shall be imposed. The reduction shall be applied to the payment standard.

(b) Child support cooperation requirements shall be applicable to the adult even if the adult is not included in the benefit group. Payment sanctions shall be applicable to benefit group payments even if the adult is not included in the benefit group.

(2) Occurrence of Non-Cooperation:

(a) Each instance in which an individual is determined by the Department to have failed to meet a work participation or child support requirement shall be considered a separate occurrence of noncompliance.

(b) When the noncompliance continues for three months without the sanctioned individual reestablishing compliance, progression to the next higher sanction level shall result in the fourth month.

(c) Reestablishing compliance shall allow full payment to resume or shall appropriately reduce the sanction level for the case in the month following the month compliance is established.

(3) Cumulative Sanctions: Noncompliance sanctions are cumulative as they relate to an individual in the benefit group.

(a) A cumulative sanction shall result when there is one or more failures by an individual in the benefit group to comply with work program or child support enforcement requirements.

(b) A cumulative sanction, whether or not cured, shall remain the property of the individual benefit group member who caused the sanction. An individual with a cumulative sanction who leaves a benefit group relieves the benefit group of that individual's sanction status.

(c) An individual's compliance shall reverse the sanction level to the benefit group.

(d) An individual's sanction status can be reversed based on a hearing decision in favor of the individual that renders the sanction invalid.

(e) A third sanction level, which results in a mandatory six-month closure for the benefit group, cannot be reversed.

(4) Progressive Sanctions: Sanction levels shall be progressive to the

benefit group in which the sanctioned individual resides.

(a) A sanction shall progress to the next level when an individual fails to comply in three-month increments, or as a result of any individual's repeated or separate occurrence of failure to comply with work program or child support enforcement requirements.

(b) A sanction shall progress until compliance is established by the individual or there is a waiver of the requirement.

(c) A progressive sanction shall be reversed based on a hearing decision that renders the sanction level invalid.

(d) An individual's compliance cannot reverse the sanction level attributed to the benefit group. Once a sanction has been imposed, any subsequent sanction is imposed at the next higher level, unless reversed by a hearing decision.

B. The Conciliation Process:

(1) **When Conciliation is Available:** Conciliation shall be available to an individual once during ~~[a given]~~ an occurrence of assistance. There must be a period of at least 12 months between occurrences of assistance in order for a conciliation to be available again to the benefit group. Work program conciliation and child support conciliation are independent and are counted separately from each other.

~~[(2) Conciliation Process:]~~

~~[(a)] (2) Determining that Noncompliance Has Occurred:~~

~~[(i)] (a)~~ The determination of noncompliance with child support shall be made by CSED. The conciliation and sanctioning process for child support noncompliance is initiated upon receipt of notice from CSED that the individual has failed to cooperate. Under Subsection B of 8.102.420.14 NMAC, the non-cooperative individual shall be individually disqualified from participation in the benefit group.

~~[(ii)] (b)~~ The determination of noncompliance with work program requirements shall be made by the caseworker. ~~[Noncompliance with work programs exists if]~~ A finding of noncompliance shall be made if:

(i) ISD has not received a certification of assessment; ~~[as specified in 8.102.460 NMAC; if]~~

(ii) the individual fails or refuses to complete an IRP; ~~[or if]~~

(iii) the participant fails or refuses to submit an ~~[acceptable]~~ approvable WPA; ~~[or if]~~

(iv) the participant's monthly ~~[participation]~~ attendance report shows fewer than the minimum required hours of participation ~~[(primary and total); in primary and total work activities.]~~

~~[(b)] (3) Initiating Conciliation:~~

Within 10 days of determining that non-compliance exists, the caseworker shall take action to initiate a conciliation, if the individual's conciliation has not been used. A conciliation is initiated by the caseworker issuing a conciliation notice.

~~[(c)] (4) Conciliation Period:~~

~~[(i)] (a)~~ Conciliation is a 30-day period during which the individual has the opportunity to correct whatever failure has generated the noncompliance determination ~~[Prior to imposing the first sanction,]~~ If the Department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the Department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction. The participant shall have ten working days from the date a conciliation notice is mailed to contact the Department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the tenth working day following the date on which the conciliation notice is mailed. Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action 30 days from the date the original conciliation was initiated. The benefit group shall be subject to sanction in the month following the month the notice of adverse action expires.

~~[(ii)] (b)~~ With child support cooperation requirements, when the participant has initiated the conciliation process, it is the participant's responsibility to contact CSED and to comply with requirements or to request a waiver. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the individual is cooperating or has requested a waiver; the conciliation process shall be considered to have failed and the participant shall be subject to removal from the benefit group and the remaining benefit group shall be subject to payment sanctioning.

~~[(iii)] (c)~~ The caseworker shall make the determination whether arrangements have been made to meet work program requirements or whether there is good cause for waiving the cooperation requirements. If arrangements to meet the requirement or to waive it have not been made by the thirtieth day following issuance of the conciliation notice, the conciliation shall be considered to have failed and the individual is subject to sanctioning.

~~[(d)] C. Sanctioning:~~

~~[(i)] (1)~~ Within 10 days of determining that an individual has failed to meet

a cooperation requirement, ISD shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place ~~[if]~~ with the first payment following expiration of the notice of adverse action.

~~[(ii)] (2)~~ Notice of adverse action shall apply to all work program and child support noncompliance sanctions, including those ~~[completing]~~ relating to the conciliation process.

~~[(3)] (3)~~ An individual who corrects the failure of compliance with work program or child support enforcement requirements during the notice of adverse action 13-day time period shall not have the sanction imposed against the benefit group or payment amount. The sanction shall not count as a cumulative or progressive sanction, since the reason for the sanction was corrected during the time period of the notice of adverse action and prior to a benefit reduction being imposed. An individual who has failed to meet work participation hours cannot correct the sanction during the notice of adverse action time period.

~~[(4)] (4)~~ Failure to comply during the notice of adverse action 13-day time period shall cause the sanction to become effective.

~~[(a)] (a)~~ A sanction shall be removed effective the month following the month in which the determination is made that the individual has complied with requirements.

~~[(b)] (b)~~ A child support enforcement sanction shall be removed after CSED notifies the caseworker that the individual is in compliance with child support enforcement requirements.

~~[(c)] (c)~~ A work program sanction shall be removed after the caseworker receives verification that the individual has completed an Assessment; or has completed an IRP; or has completed a WPA that indicates the appropriate number of weekly hours in work activities; or has met work program participation hours for at least thirty (30) days; or has good cause to waive work participation requirements.

~~[(d)] D. Sanction Levels:~~

~~[(1)] (1) First-Level Sanction:~~

~~[(a)] (a)~~ The first failure to comply, or first step sanction for failure to comply, shall result in a sanction of 25% of the standard of need. The benefit group shall be given concurrent notice of the imposition of the sanction.

~~[(b)] (b)~~ If the step one, or 25% sanction, lasts for more than three months, or an individual has a second incident of failure to comply, the sanction shall advance to step two, or 50% sanction, as described below.

~~[(2)] (2) Second-Level Sanction:~~

~~[(a)] (a)~~ The second level of sanction for failure to comply shall result in a decrease of 50% of the standard of need. The second level is initiated by failure to

comply with work program participation or child support enforcement requirements for more than three months; a second instance of noncompliance with a requirement by the benefit group; or failure to comply with two requirements: such as, failure to comply with both CSED and work program participation requirements. The group shall be given concurrent notice of imposition of the second-level sanction.

(b) A failure to meet work or CSED requirements for more than three months at the second level, or a third incidence of failure to comply with any program requirement, or failure to comply with work program or CSED requirement by more than one member of the benefit group, shall result in the third sanction level, as described below.

(3) Third-Level Sanction:

(a) The third sanction level is case closure for a period of not less than six months. The group shall be given notice of adverse action prior to imposition of the sanction.

(b) Once an individual is sanctioned at the third level, any subsequent incident of failure to comply with program requirements shall immediately result in the third level of sanction, case ineligibility for six months.

[D.] E. Sanctions by Other States or Other Programs: Individuals in sanction status for failure to participate in other programs, such as the Food Stamp E&T program, or another state's or tribal TANF program, shall not carry that sanction status into NMW.

[E.] E. Sanctions with Respect to Voluntary Participants: A voluntary participant is not subject to sanction for failure to participate, but shall be removed from the work program and lose eligibility for support services [8.102.620.10 NMAC - Rp 8.102.620.10 NMAC, 07/01/2001; A, 02/14/2002]

8.102.620.11 NON-REPORTING SANCTIONS

A. General: The eligibility determination and payment calculation process relies upon applicants and recipients to provide accurate and timely reports of information affecting their eligibility and payment. Payment sanctions for non-reporting shall be established to encourage timely and accurate reporting and to offset benefits resulting from the reporting of inaccurate or misleading information, the untimely reporting of changes, or the failure to report any required information.

B. Non-Reporting Sanctions:

(1) **Length of Sanction:** Each non-reporting sanction shall run for a period of four months for the first month in which

failure to report occurred. An additional month shall be added for each additional month of non-reporting until the payment is corrected.

(2) Definition of an Occurrence of Non-Reporting:

An occurrence of non-reporting exists when an applicant or recipient fails to report information or reports incorrect information which results in an overpayment of financial assistance benefits for which the individual is at fault.

(3) Amount of Sanction:

(a) Reporting sanctions shall be calculated at 25% of standard of need for the size of the benefit group being sanctioned.

(b) Reporting sanctions are not progressive. If there is another occurrence of non-reporting prior to the end of a non-reporting sanction period, the next and any subsequent non-reporting sanctions shall be consecutive and at the 25% level.

(c) Reporting sanctions, child support sanctions and work program sanctions shall be integrated into a single calculation to determine the final sanction amount.

(d) If a case closes during a reporting sanction period for reasons other than sanctions, the non-reporting sanction shall be suspended and resumed at the same duration the next time the case is opened.

(4) **Procedures:** The following steps shall be taken in implementing a payment sanction.

(a) The worker shall document and establish an overpayment claim using ISD2 overpayment claims procedures. The worker shall also determine whether the recipient was at fault.

(b) The county director or a designated unit supervisor shall review the overpayment and determine the accuracy of the overpayment determination and appropriateness of the fault determination. Upon determining that all is in order, the county director, or designated supervisor shall cause a notice of intent to sanction to be issued to the recipient. Failure by the recipient to contact the person issuing the notice within the 10 working days allowed shall constitute waiver of conciliation rights.

(c) If the recipient requests conciliation within the 10 working days of issuance of notice, the county director or designated supervisor shall schedule a conciliation conference.

(d) The conciliation conference is conducted by the county director or designated supervisor.

(i) The caseworker shall describe the reporting error, how the amount of the overpayment is determined and the reasons for finding the recipient at fault.

(ii) The recipient shall

have the opportunity to discuss the overpayment determination, the finding of fault and to show good cause why the sanction should not be imposed.

(iii) Based upon this determination, the county director or designated supervisor shall determine whether a sanction should be imposed.

(iv) The recipient may represent himself or be represented by someone else. If the recipient wishes to be represented by another individual, the recipient must designate that individual on a form ISD-121.

(e) Following the conference, the county director shall issue written notice stating whether or not the sanction is to be imposed, and the worker shall effect the sanction causing issuance of a notice of adverse action. The payment reduction takes effect [the] in the month following expiration of the notice of adverse action.

(f) Recipients who disagree with the sanction determination shall have fair hearing rights and access to legal adjudication through the fair hearing process.

C. Quarterly Reporting:

A benefit group subject to Quarterly Reporting shall be subject to non-reporting sanctions as specified in Subsection J of 8.102.120.11 NMAC.

[8.102.620.11 NMAC - Rp 8.102.620.11 NMAC, 07/01/2001; A, 02/14/2002]

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

This is an amendment to 8.102.630 NMAC, Sections 8 and 9.

8.102.630.8 PROCESSING STANDARDS:

There is a continuing responsibility on the part of both the recipient and the caseworker to make sure that benefits paid to the benefit group correctly reflect the benefit group's circumstances for the month for which payment is being made.

A. Client Reporting

Timeliness: The benefit group must report any of the changes specified below within 10 calendar days of the date the change becomes known to the benefit group.

B. Who is Responsible for Reporting:

The individual designated as the head of household is responsible for reporting changes. If a protective payee has been named because of mismanagement, part of the protective payee's responsibilities include making sure that changes are reported, either by the specified relative or the protective payee.

C. Department Action on Reported Changes:

Reported changes are

evaluated and eligibility/payment changes made within 10 days of receiving notice of a change. The change is made as soon as possible but must be effected no later than the end of the month following the month in which the change is reported.

D. What Must Be Reported: Recipients shall be required to report any change in benefit group composition and circumstances. This includes:

(1) An Individual Moving into or out of the Home: A benefit group must report when an individual moves into or out of the home so that the impact of the person on the benefit group's eligibility and payment can be evaluated.

(2) Social Security Number: A benefit group must report when one of its members is assigned a Social Security Number.

(3) Residence: A benefit group is required to report whenever the benefit group or any member of it is leaving New Mexico.

(4) School Attendance: A benefit group must report whenever a dependent child age six or older drops out of school or has three unexcused absences. This information must be reported within 14 days.

(5) Address: A benefit group must report moving to another place of domicile, regardless of whether mail is being sent to that address, or whether the place of domicile is the place of residence.

(6) Income: A benefit group must report any change in benefit group income and any change in the employment status of any benefit group [group] member.

(7) Resources: A benefit group must report any change in resources which places the benefit group over the resource limit standards of \$1500 in liquid resources or \$2000 in non-liquid resources.

E. Quarterly Reporting: A benefit group subject to Quarterly Reporting shall be subject to reporting requirements as specified in Subsection I of 8.102.120.11 NMAC.

[8.102.630.8 NMAC - Rp 8.102.630.8 NMAC, 07/01/2001; A, 02/14/2002]

8.102.630.9 CHANGE PROCESS-

ING: If during a certification period, changes occur that affect eligibility or benefit amount, the caseworker ~~must~~ shall take action to adjust the benefit group's eligibility or benefit amount.

A. Benefit Group Responsibilities:

(1) At Application: An applicant must report all changes affecting eligibility and benefit amount that may have occurred since the date the application was filed and before the date of the interview. Changes occurring after the interview, but before the date of the approval notice, must be reported

ed by the benefit group within 10 days of the date the change is known to the benefit group.

(2) Change Reporting Requirements for Active Cases: A benefit group must report changes within ten (10) days of the date a change becomes known to the benefit group.

(3) Time Limits: The 10-day period begins with the date the change becomes known to the benefit group. The change is considered reported on the date the report of change is received by the local county office or, if mailed, the date of the postmark on the benefit group's report plus three days mailing time, whichever is earlier. Benefit groups shall be encouraged to use a change report form to document changes, although changes may also be reported by personal visit or telephone. In the absence of a written report, a 13-day notice of adverse action is required if the change will result in a reduction or termination of benefits.

(4) Quarterly Reporting Benefit Groups:

(a) Change reporting requirements for a benefit group subject to Quarterly Reporting is specified in 8.102.120.11 NMAC.

(b) Changes reported and verified by a benefit group subject to Quarterly Reporting requirements shall be acted on by the caseworker according to the standards of Subsection B of 8.102.630.9 NMAC.

B. Department

Responsibilities: The caseworker shall inform the benefit group of its responsibility to report changes. The caseworker shall be required to take action on any change reported by the benefit group to determine if the change affects eligibility or benefit amount. The caseworker shall document the date a change is reported, and whether the change affects eligibility or benefit amount.

(1) Action on Changes: When a benefit group reports a change, the caseworker must take action to determine the benefit group's eligibility and benefit amount within ten days of the date the change is reported. For changes that result in a decrease or termination of benefit group benefits, the caseworker shall act on the change as follows:

(a) If the caseworker receives a written report from the benefit group, action shall be taken for the following month without an advance notice of adverse action. The benefit group shall be provided with adequate notice. If the certification period will expire before the expiration notice time limit, no action shall be required to reduce or terminate benefits.

(b) If the change is reported by any other means, within 10 days, the case-

worker shall take action to issue a notice of adverse action to reduce or terminate benefits effective the month following the month the adverse action time limit expires. If the certification period will expire before the expiration of the adverse action time limit, no action shall be required to reduce or terminate benefits.

(2) Increased Benefits:

(a) For changes resulting in an increase, the caseworker shall make the change prospectively beginning in the month following the month the change was reported.

(b) Providing Verification: The benefit group shall be allowed 10 days from the date a change is reported to provide verification. If verification is not provided at the time a change is reported, the benefit group shall be allowed 10 days, plus 3 days if a notice is mailed, to provide verification.

(3) Decreased Benefits: When a benefit group timely reports a change which will decrease benefits, the caseworker shall issue an adverse action notice to the benefit group. If the adverse action time limit expires in the following month, there is no overpayment in the following month and the benefit group is entitled to the greater benefit amount. The decrease shall be effective in the month following the month the notice expires.

(4) Termination of Benefits:

When the benefit group reports a change which will result in a termination of benefits, the caseworker shall issue an adverse action notice.

(a) If the adverse action time limit expires in the following month, there is no overpayment to the benefit group in the following month and the benefit group shall be entitled to the greater benefit amount. No claim shall be filed.

(b) If the adverse action time limit will expire after the certification period ends, action shall be taken to terminate benefits and the certification period shall be allowed to expire. The caseworker shall document the change in the case record.

(5) No Change in Benefit

Amount: When a reported change has no effect on the benefit amount, the caseworker shall document the change in the case file and notify the benefit group of the receipt of the report and that there is no change in benefits.

C. Failure to Report Changes:

(1) If the caseworker discovers that the benefit group failed to report a change as required, the caseworker shall evaluate the change to determine whether the benefit group received benefits to which it was not entitled. After verifying the change, the caseworker shall initiate a claim against the benefit group for any month in

which the benefit group was over paid benefits. The first month of the over payment shall be the month following the month the adverse action notice time limit would have expired had the benefit group timely reported the change. If the discovery is made within the certification period, the benefit group is entitled to a notice of adverse action if its benefits shall be reduced. No claim shall be established because of a change in circumstances that a benefit group is not required to report.

(2) Increased Benefit Amount:

When a benefit group fails to make a timely report of a change which will result in an increased benefit amount the benefit amount shall increase the month following the month in which the change was reported.

D. Other Changes: All unreported changes of which the caseworker becomes aware of shall be acted upon. At a minimum, this means documenting changes in the case record. All discrepancies and questionable information shall be resolved to make sure that the correct benefit amount is issued to the benefit group. [8.102.630.9 NMAC - N, 07/01/01; A, 02/14/2002]

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

This is an amendment to 8.139.100 NMAC, Sections 7 and 8. The definitions and acronyms are moved from 8.139.650 NMAC.

8.139.100.7 DEFINITIONS

A. Definitions A-L:

(1) Adequate Notice: Means a written notice that includes a statement of the action HSD has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits, liability of the household for any overissuances received if hearing decision is adverse to the household. An adequate notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(2) Adjusted Net Income: Means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical

expenses are allowed for certain eligible members as a deduction from their gross income). Thirty percent of this amount subtracted from the MFSA for the household's size is its benefit amount.

(3) Application: Means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(4) Attendant: Means an individual needed in the home for medical, housekeeping, or child care reasons.

(5) Authorized Representative: Means an individual designated by a household or responsible member to act on its behalf in applying for food stamp benefits, obtaining food stamp benefits, and/or using food stamp benefits to purchase food for the household. This can include a public or private, nonprofit organization or institution providing assistance, such as a treatment or rehabilitation center, or shelter, which acts on behalf of applicants, whom resides at the facility.

(6) Benefit Month: Means the month for which food stamp benefits have been issued. This term is synonymous with Issuance Month defined below.

(7) Beginning Month: Means the first month for which a household is certified after a lapse in certification of at least one calendar month in any project area. A household is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(8) Boarder: Means an individual to whom a household furnishes lodging and meals for reasonable compensation. Such a person is not considered a member of the household for determining the food stamp benefit amount.

(9) Boarding House: Means a commercial establishment, which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house is not used to establish if a boarding house is a commercial enterprise.

(10) Budget Month: Means the calendar month for which income and other circumstances of the household are determined in order to calculate the food stamp benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

(11) Capital Gains: Means proceeds from the sale of capital goods or equipment.

(12) Cash Assistance (CA) Households: (also referred to as Financial Assistance) Means households composed entirely of persons who receive CA payments. Cash Assistance (CA) means any of the following programs authorized by the Social Security Act of 1935, as amended:

Old Age Assistance; Temporary Assistance to Needy Families (TANF); Aid to the Blind; Aid to the Permanently and Totally Disabled; and Aid to the Aged, Blind or Disabled. It also means General Assistance (GA), cash payments financed by state or local funds made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. CA households composed entirely of TANF, GA and/or SSI recipients are categorically eligible for FS.

(13) Certification: Means the authorization of eligibility of a household and issuance of food stamp benefits.

(14) Certification Period: Means the period assigned for which a households is eligible to receive food stamp benefits. The certification period shall conform to calendar months.

(15) Collateral Contact: Means an individual or agency designated by the household to provide information concerning eligibility.

(16) Communal Diner: Means an individual sixty (60) years of age or over who is not a resident of an institution or a boarding house, who is living alone or with a spouse, and elects to use food stamp benefits to purchase meals prepared for the elderly at a communal dining facility which has been authorized by USDA/FNS to accept food stamp benefits.

(17) Communal Dining Facility: Means a public or private nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for SSI recipients, and their spouses; a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concession prices to elderly persons or SSI recipients and their spouses. Such establishments include a facility such as a senior citizen's center, an apartment building occupied primarily by elderly persons, or any public or private nonprofit school (tax exempt) which prepares and serves meals for elderly persons.

(18) Date of Entry/Admission: Means the date established by the Immigration and Naturalization Service as the date an alien (or sponsored alien) was admitted for permanent residence.

(19) Disability: Means the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

(20) Disabled Member: See Elderly/Disabled Member.

(21) Documentation: Means a

written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(22) Drug Addiction or Alcoholic Treatment and Rehabilitation Program: Means any drug addiction treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center under part B of title XIX of the Public Health Service Act (42 U.S.C. 3004 et seq.)

(23) Elderly or Disabled Member:

(a) Elderly: Means a person who is age 60 or older.

(b) Disabled: Means a person who meets any of the following standards:

(i) Receives Supplemental Security Income (SSI) under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(ii) Receives federally or state administered supplemental benefits under section 1616a of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(iii) Receives federally or state administered supplemental benefits under section 212(a) of Pub. L. 93-66;

(iv) Receives disability retirement benefits from a government agency (e.g. Civil Service, ERA, and PERA) because of a disability considered permanent under section 221(i) of the Social Security Act;

(v) Is a veteran with a service-connected or non-service connected disability rated by the Veterans Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;

(vi) Is a veteran considered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States Code;

(vii) Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently homebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

(viii) Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non-service-connected death under title 38 of the United States Code and has a disability considered permanent

under section 221(i) of the Social Security Act ("Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated, or have been approved for such payments, but are not yet receiving them); or

(ix) Receives an annuity payment under section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board, or section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act.

(x) Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits provided that the eligibility to receive an of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

(24) Eligible Foods:

(a) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption of eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use food stamp benefits to purchase delivered meals, or meals served by an authorized communal dining facility for the elderly, for SSI households, or both, to households eligible to use food stamp benefits for communal dining;

(d) Meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households;

(e) Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as found in the definition of "elderly or disabled member" contained in this section;

(f) Meals prepared and served by a shelter for battered women and children to its eligible residents; and

(g) In the case of homeless food stamp households, meals prepared and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter) approved by HSD that feeds homeless persons.

(25) Encumbrance: Means debt owed on property.

(26) Equity Value: Means the fair market value of property, less any encumbrances owed on the property.

(27) Excluded Household Members: Means individuals residing within a household who are excluded when determining household size, the food stamp benefit amount or the appropriate MFSA. These include ineligible aliens, individuals disqualified for failure to provide an SSN, or failure to comply with the work requirements, and those disqualified for intentional program violation. The resources and income (counted in whole or in part) of these individuals shall be considered available to the remaining household members. (See Non-household Members).

(28) Expedited Services: The process by which households reporting little or no income or resources shall be provided an opportunity to participate in the FSP, no later than the seventh calendar day following the date the application was filed.

(29) Fair Hearing: An administrative procedure during which a claimant and/or the claimant's representative may present a grievance to show why he/she believes an action or proposed action by HSD is incorrect or inaccurate.

(30) Fair Market Value (FMV): Means the amount an item can be expected to sell for on the open market. The prevailing rate of return, such as square foot rental for similar usage of real property in an area.

(31) Financial Assistance (FA) Households: (also referred to as Cash Assistance) Means households composed entirely of persons who receive FA payments. Financial assistance (FA) means any of the following programs authorized by the Social Security Act of 1935, as amended: Old Age Assistance; Temporary Assistance to Needy Families (TANF); Aid to the Blind; Aid to the Permanently and Totally Disabled; and Aid to the Aged, Blind or Disabled. It also means General Assistance (GA), cash payments financed by state or local funds, made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. FA households composed entirely of TANF, GA and/or SSI recipients are categorically eligible for FS.

(32) FNS: Food and Nutrition Service of the United States Department of Agriculture (USDA).

(33) Food Stamp Act: The Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

(34) Fraud: The elements of fraud are:

(a) Intentionally taking anything of value;

(b) Intentionally making a

misrepresentation of, or failing to disclose, a material fact; with the knowledge that such a fact is material (necessary to determine initial/ongoing eligibility or benefit entitlement); and with the knowledge that the information is false; and with the intent that the information be acted upon (deceive/cheat); with reasonable reliance on the person who hears the information to accept it as the truth.

(c) In determining whether there is a "reasonable suspicion" of client fraud, particular attention shall be given to the client's intent in providing false information or withholding information. The law requires that the client acted intentionally in giving or withholding information, and with the further specific intent to deceive or cheat.

(d) The materiality of the information in question is determined by whether the information was necessary to determine eligibility or benefit amounts. However, the client must have knowledge that the information is material to the client's eligibility or benefit amount.

(e) In order to establish a "reasonable suspicion" of client fraud, there must be identifiable objective factors indicating that there is a possibility of fraud in the case. This means that there must be more than a "hunch". However, it is not necessary for the caseworker to make a determination that fraud has been actually committed.

(35) Full Time Employment (FS): Working thirty (30) hours or more per week, or earning income equivalent to the minimum wage multiplied by 30 hours.

(36) General Assistance (GA) Households: Means a household in which all members receive cash assistance financed by state or local funds.

(37) Gross Income: The total amount of income that a household is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including Medicare), and monies due and owing the household, but diverted by the provider. Gross income does not include specific income exclusions, such as, but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(38) Group Living Arrangements: Means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp

benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of "Elderly or Disabled Member" set forth at (i) through (x) of Subparagraph (b) of Paragraph (23) of Subsection A of 8.139.100.7 NMAC.

(39) Head of Household: The household is the basic assistance unit for the food stamp program. The household has the right to select the head of household in accordance with the CFR 273.1 (d).

(40) Homeless Individual: Means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

(a) A supervised shelter providing temporary accommodations (such as a welfare hotel or congregate shelter);

(b) A halfway house or similar institution providing temporary residence for individuals intended to be institutionalized;

(c) A temporary accommodation for no more than 90 days in the residence of another individual, beginning on the date the individual moves into the temporary residence; or

(d) A place not designed for, or ordinarily used as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

(41) Homeless Meal Provider: Means a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

(42) Immigrant: Means a lawfully admitted alien who entered the U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

(43) Immigration and Naturalization Service (INS): A Division of the U.S. Department of Justice.

(44) Ineligible Alien: Means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

(45) Income: Means all monies received by the household from any source, excluding only the items specified by law or regulation. Income is also defined as any monetary gain or benefit to the household.

(46) Income and Eligibility Verification System: This is a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, referred to as IEVS.

(47) Initial Month: Means the first month for which a first-time household is certified for participation in the Food Stamp Program. An initial month is also a month in which a household is certified fol-

lowing a break in participation of one calendar month or longer. For migrant or seasonal farm worker households, an initial month shall only be considered if there has been an interruption in certification of at least one calendar month.

(48) Inquiry: Means a request for information about eligibility requirements for a cash, medical, or food assistance program that is not an application, (although the inquiry may be followed by an application).

(49) Institution of Higher Education: Means any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(50) Institution of Post-Secondary Education: Means an institution of post-secondary education and any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or provides a program of training to prepare students for gainful employment.

(51) Irrevocable Trust Funds: Means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(52) Issuance Month: Means the calendar month for which food stamps are issued. In prospective budgeting, the budget and issuance months are the same. In retrospective budgeting, the issuance month follows the budget month.

(53) Low-Income Household: Means a household whose annual income does not exceed 125% of the Office of Management and Budget poverty guideline.

B. Definitions M-Z

(1) Maximum Food Stamp Allotment (MFSA): The diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age. The cost of such a diet shall be the basis for uniform food stamp benefit amounts for all households, regardless of their actual composition. In order to develop maximum food stamp benefit amounts, the USDA makes adjustments for household size taking into account the economies of scale and other adjustments as required by law. The MFSA is used to determine if a boarder is paying reasonable compensation for services. The Maximum Food Stamp

Allotment (MFSA) was the Thrifty Food Plan (TFP).

(2) Meal Delivery Service:

Means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concession prices to elderly persons, and their spouses, and to the physically or mentally handicapped, and to persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

(3) Medicaid:

Medical Assistance under title XIX of the Social Security Act, as amended.

(4) Migrant/Migrant

Household: Means an individual who travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity. A migrant household is a group that travels for this purpose.

(5) Mixed Households:

Means those households in which some but not all of the members receive Cash Assistance benefits.

(6) Net Monthly Income:

Means gross nonexempt income minus the allowable deductions. It is the income figure used to determine eligibility and food stamp benefit amount.

(7) Non-Cash Assistance (NCA)

Households: Means any household, which does not meet the definition of a Cash Assistance household, including households composed of both Cash Assistance and (NCA) members (mixed household). Same as Non-Financial Households (NFA)

(8) Non-Financial Assistance

(NFA) Households: Means any household, which does not meet the definition of a Financial Assistance household, including households composed of both Cash Assistance and (NFA) members (mixed household). Same as Non-Cash Households (NCA)

(9) Nonhousehold Members:

Persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are excluded. Nonhousehold members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

(10) Overissuance:

Means the amount by which food stamp benefits issued to a household exceed the amount the household was eligible to receive.

(11) Period of Intended Use:

Means the month in which the benefits are issued if issued before the 20th of the

month. For benefits issued after the 20th of the month, the period of intended use is the rest of the month and the following month.

(12) Principal Wage Earner:

Means the household member with the greatest amount of earned income in the two months preceding a determination that a program rule has been violated. This applies only if the employment involves 20 hours or more a week or pays wages equivalent to the federal minimum wage multiplied by 20 hours. In making this evaluation, the entire household membership shall be considered, even those who are excluded or disqualified but whose income must be counted for eligibility and benefit amount determination. For purposes of determining noncompliance with the food stamp work requirements, including E&T components, voluntary quit, and work-fare, the head of household is the principal wage earner unless the household has selected an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the designated head of household as agreed upon by all adult members of the household. A person of any age shall not be considered the principal wage earner if they are living with a parent or person fulfilling the role of parent, if the parent or parent-substitute is:

(a) Registered for employment;

(b) Exempt because of Title IV compliance;

(c) In receipt of UCB or is registered as part of the UCB process; or

(d) Employed or self-employed a minimum of 30 hours a week or receiving income at the federal minimum hourly rate multiplied by 30 hours.

(13) Project Area:

Means the county office or similar political subdivision designated as the unit for FSP operations.

(14) Prospective Budgeting:

Means the computation of a household's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(15) Quality Control (QC):

Federally mandated as part of the Performance Reporting System whereby each state agency is required to review a sample of active cases for eligibility and benefit issuance, and to review a sample of negative cases for correct application of policy. The objectives are to determine a state's compliance with the Food Stamp Act and CFR regulations, and to establish the basis for a state's error rate, corrective action to avoid future errors, and liability for errors in excess of national standards, or eligibility for enhanced federal funding if the error rate is below national standards.

(16) Quarterly Reporting:

Means a reporting requirement that allows a 12-month certification period and requires a household to submit a report form every third month during the certification period. These households are required to report changes only at each Quarterly Report.

(17) Real Property: Means land, buildings, and whatever is built on or affixed to the land.

(18) Recipient: Means a person receiving food stamp benefits. (Same as a participant.)

(19) Refugee: Means a lawfully admitted individual granted conditional entry into the U.S.

(20) Reasonable Compensation: Means a boarder payment, in cash, equivalent to the MFSA for the number of boarders.

(21) Regular Reporting: Means a reporting requirement in which a household is not required to meet Quarterly Reporting requirements, and must report changes within 10 days of the date the change becomes known.

(22) Retail Food Store: "Retail Food Store" means:

(a) An establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry, is more than 50 percent staple food items for home preparation and consumption;

(b) Public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics;

(c) Public or private nonprofit group living arrangements, or public or private nonprofit shelters for battered women and children, or public or private nonprofit establishments, approved by HSD, or a local agency, that feed homeless persons;

(d) Any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; a farmer's market.

(23) Retrospective Budgeting: Means the computation of a household's benefits for an issuance month based on actual income and circumstances that existed in the previous month, the "budget" month.

(24) Self-Employed: An individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. The individual is not eligible to

draw UCB by virtue of their job efforts.

(25) Shelter for Battered Women and Children: Means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(26) Sponsor: Means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

(27) Sponsored Alien: Means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Subsection 101(a)(15) and Subsection 101(a)(2) of the Immigration and Nationality Act.

(28) Spouse: Means either of two individuals who:

(a) would be defined as married to each other under applicable State law; or

(b) are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(29) Standard Utility Allowance (SUA): Means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity (apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

(30) State Wage Information Collection Agency: The wage information collection agency for the State of New Mexico is the Department of Labor (DOL) Employment Security Division (ESD) which administers the state employment compensation law and which provides a quarterly report of employment related income and eligibility data.

(31) Striker: Means anyone involved in a strike or concerted work stoppage by employees (including stoppage due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

(32) Student: Means an individual attending school at least half time, as defined by the institution; any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

(33) Supplemental Security Income (SSI): Means monthly cash payments made under the authority of:

(a) Title XVI of the Social

Security Act, as amended, to the aged, blind and disabled;

(b) section 1616(a) of the Social Security Act; or

(c) section 212(a) of P.L. 93-66.

(34) SSI Household: Means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for food stamps through a Social Security office. The application must be forwarded to the appropriate food stamp (ISD) office for processing. SSI households are categorically eligible.

(35) Supplementary Unemployment Benefits (SUB): Part of the guaranteed annual wage provisions in the auto industry whereby the company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

(36) Thrifty Food Plan (TFP): See Maximum Food Stamp Allotment.

(37) Transitional Housing: Housing is transitional if its purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of housing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

(38) Vehicles: Means a mode of transportation for the conveyance of passengers to or from employment, daily living, or for the transportation of goods. For purposes of the Food Stamp Program boats, trailers, and mobile homes shall not be considered as vehicles.

(39) Verification: Means the use of third-party information or documentation to establish the accuracy of statements on the application.

[8.139.100.7 NMAC – Rn, 8.139.650.7 NMAC & A, 02/14/2002]

8.139.100.8 ABBREVIATIONS & ACRONYMS:

A. Abbreviations and Acronyms:

(1) ABAWD: Able Bodied Adults Without Dependents

(2) AFDC: Aid to Families with Dependent Children (replaced by TANF effective July 1, 1997)

(3) BIA-GA: Bureau of Indian Affairs-General Assistance

(4) CA: Cash Assistance (same as Financial Assistance)

(5) CE: Categorical Eligibility or Categorically Eligible

(6) CFR: Code of Federal Regulations

(7) CPI-U: Consumer Price

Index for Urban Consumers

(8) CS: Child Support

(9) CSED: Child Support Enforcement Division

(10) CYFD: (New Mexico) Children Youth & Families Department

(11) DOH: (New Mexico) Department of Health

(12) DOJ: (United States) Department of Justice

(13) DOL: Department of Labor (formerly ESD)

(14) DOT: Dictionary of Occupational Titles

(15) DRIPS: Disqualified Recipient Information Processing System

(16) E&T: Employment and Training

(17) EBT: Electronic Benefit Transfer

(18) EC: Employment Counselor

(19) EI: Earned Income

(20) EW: Eligibility Worker (now FAA or caseworker)

(21) FA: Financial Assistance (same as Cash Assistance)

(22) FAA: Family Assistance Analyst (caseworker)

(23) FCS: Food and Consumer Services of the USDA

(24) FFY: Federal Fiscal Year

(25) FMV: Fair Market Value

(26) FNS: Food and Nutrition Service (now the FCS)

(27) FSP: Food Stamp Program

(28) GA: General Assistance

(29) GED: General Equivalency Degree

(30) HHS: (U.S. Dept. of) Health and Human Services

(31) HSD: (New Mexico) Human Services Department

(32) HUD: (U.S. Dept. of) Housing and Urban Development

(33) IEVS: Income and Eligibility Verification System

(34) INS: (U.S.) Immigration and Naturalization Service

(35) IPV: Intentional Program Violation

(36) ISD: (HSD) Income Support Division

(37) ISD2: Integrated Services Delivery for ISD

(38) ISS: Income Support Specialist (now FAA or caseworker)

(39) JOBS: Jobs Opportunities and Basic Skills (a work program under AFDC)

(40) JTPA: Job Training Partnership Act (now WIA)

(41) LIHEAP: Low Income Home Energy Assistance Program

(42) LITAP: Low Income Telephone Assistance Program

(43) MFSA: Maximum Food

Stamp Allotment (benefit amount)(44) MRRB: Monthly Reporting and Retrospective Budgeting(45) MVD: (New Mexico)Motor Vehicle Division(46) NADA: NationalAutomobile Dealers Association(47) NFA: NonfinancialAssistance (same as Non-Cash Assistance (NCA))(48) NMW: New Mexico Works(49) QC: Quality Control(50) QR: Quarterly Reporting or Quarterly Reporters(51) RR: Regular Reporting or Regular Reporters(52) RSVP: Retired SeniorsVolunteer Program(53) SAVE: Systematic AlienVerification for Entitlements(54) SSA: Social SecurityAdministration(55) SSI: Supplemental SecurityIncome(56) SSN: Social SecurityNumber(57) SUA: Standard UtilityAllowance(58) SWICA: State WageInformation Collection Agency(59) TANF: TemporaryAssistance to Needy Families (block grant program under Title IV-A of the Social Security Act)(60) TAPP: Tribal Assistance Project Program (Navajo)(61) TFP: Thrifty Food Plan (now the Maximum Food Stamp Allotment)(62) UCB: UnemploymentCompensation Benefits(63) USDA: U. S. Department ofAgriculture(64) VA: VeteransAdministration(65) WIA: WorkforceInvestment Act (formally JTPA)**B. [Reserved]**

[8.139.100.8 NMAC – Rn, 8.139.650.8 NMAC & A, 02/14/2002]

8.139.100.[8]9 MISSION STATEMENT:

A. The purpose of the Program is to provide for improved levels of nutrition among low-income households through a cooperative Federal-State program of food assistance to be operated through normal channels of trade.

B. Section 2 of the Food Stamp Act of 1977 states, in part: Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will

permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power to all eligible households who apply for participation.

[2/01/95; 8.139.100.9 NMAC -Rn, 8.139.100.8 NMAC, 02/14/2002]

8.139.100.[9]10 P R O G R A M OVERVIEW

A. Establishment of the Food Stamp Program: Sec. 4 [2013] (a) of the Act provides that subject to availability of funds appropriated under section 18, the Secretary is authorized to formulate and administer a food stamp program under which eligible households within a State be provided an opportunity to obtain a more nutritious diet through the issuance to the household of an allotment.

B. State Participation: A state is prohibited from participating in the food stamp program if it is determined that state or local sales taxes are collected on purchases of food made with coupons issued under the Act.

C. Retail Stores: Coupons used by households shall be used only to purchase food from retail food stores which have been approved for participation in the Food Stamp Program. Coupons issued and used as provided in the Act shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

[2/01/95; 8.139.100.10 NMAC -Rn, 8.139.100.9 NMAC, 02/14/2002]

8.139.100.[40]11 GENERAL PROGRAM DESCRIPTION

A. Purpose: The Food Stamp Program is designed to promote the general welfare and to safeguard the health and well being of the nation's population by raising the levels of nutrition among low-income households.

B. Household Participation: Participation in the Food Stamp Program shall be limited to those households whose income and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Eligibility for the Program is determined by comparing the applicant group's income, resources, and non-financial eligibility information to the Program's policies.

C. National Standards: Uniform national standards for determining eligibility and participation are established each year, and are effective every October. A household ~~must~~ shall meet income and resource limits and other specific eligibility criteria before approval for participation in the Food Stamp Program. The income test

is based on 130% of the federal poverty level. Resource eligibility limits are \$2,000 for households whose members are under 60 years of age, and \$3,000 for households containing one or more individuals 60 years of age or over. The federal government funds Program benefits at 100% and administrative costs at 50%.

[2/01/95; 8.139.100.11 NMAC -Rn & A, 8.139.100.10 NMAC, 02/14/2002]

8.139.100.[44]12 ADMINISTRATION:

The State agency of each participating State shall assume responsibility for the certification of applicant households and for the issuance of coupons (benefits). In New Mexico the agency responsible for administration of the Food Stamp Program is the Human Services Department, Income Support Division. HSD is responsible for control and accountability in the Food Stamp Program. Records shall be kept to ascertain whether the program is being conducted in compliance with provisions of the Food Stamp Act of 1977. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for not less than three years.

[2/01/95; 8.139.100.12 NMAC -Rn, 8.139.100.11 NMAC, 02/14/2002]

8.139.100.[42]13 [BUREAU RESPONSIBILITIES] DIVISION RESPONSIBILITIES: The ~~[Food Assistance Bureau is]~~ Income Support Division of the Human Services Department shall be responsible for general administration of the Food Stamp Program.

A. Issuance of food stamp coupons to eligible low-income households is accomplished in Santa Fe via direct mail delivery.

B. Since September 1990, benefit delivery was accomplished via electronic benefit transfer in selected counties. The electronic benefit transfer delivery system has been approved statewide.

C. Policy changes and interpretation is forwarded to field staff and other interested parties as it is received from the Food and Nutrition Service of the United States Department of Agriculture. Individual requests for policy clarifications are also disseminated.

D. The ~~[Bureau]~~ Division is responsible for record keeping to satisfy provisions of the Food Stamp Act of 1977, including keeping numbers of participating households, amount of food stamp benefits issued monthly, benefits returned monthly, affidavits filed, and coupons destroyed.

[8.139.100.13 NMAC -Rn & A, 8.139.100.12 NMAC, 02/14/2002]

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

This is an amendment to 8.139.110 NMAC, Sections 9, 10, and 11. This amendment informs recipients that cash assistance requirements or time limits have no affect on food stamp eligibility; adds language on the Privacy Act statement for the Food Stamp Program; provides for implementation of quarterly reporting and for notification to a household that has missed its first interview.

8.139.110.9 RIGHT TO APPLY:

A. Anyone has the right to apply for any benefits provided by ISD whether or not it appears that [he/she] the individual will be found eligible. [Individuals] An individual requesting information or assistance [will] shall be informed of [their] the right to apply, whether or not it appears [they] the individual will be found eligible.

B. [If anyone] An individual who requests information or assistance and who [requesting information/assistance] wishes to apply, [he/she will] shall be encouraged to complete an application the same day that contact is made with the office.

(1) [Individuals will] An individual shall be informed that the date of application affects the benefit amount.

(2) [Individuals will] An individual shall be informed that [they may file] an incomplete application may be filed as long as the form has the applicant's name and address and is signed by a responsible household member or authorized representative.

(3) An interview [is not] shall not be required before filing an application.

(4) A household shall be informed, except for a Food Stamp Program requirement, that any disadvantages or requirements for applying for or receiving cash assistance do not apply to the Food Stamp Program and that receiving food stamps shall have no bearing on any other program's time limits that may apply to the household.

(5) If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application, [he/she] the individual is entitled to be mailed an application the same day the office is contacted.

[A-] C. SSI Applicants:

(1) Whenever a household consists only of SSI applicants or recipients, the household has the right to apply for food stamp benefits and to transact all food stamp business at a Social Security (SSA)

office, provided it has not applied for food stamp benefits in the preceding 30 days or does not have a food stamp application pending at a local ISD office.

(a) Such applications are considered filed for normal processing purposes when the signed application is received by SSA.

(b) SSA is required to forward every application to the appropriate ISD office within one working day of receipt.

(c) SSI clients are not required to see an ISD [Income Support Specialist (ISS)] caseworker or be otherwise subjected to a second interview, although additional information or verification may be requested.

(2) SSI/FS Prerelease Applications: A resident of a public institution who applies for SSI prior to release from the institution under the Social Security Administration (SSA) Prerelease Program for the Institutionalized [42 U.S.C. 1383 (j)] [will] shall be permitted to apply for food stamp benefits at the same time [he/she] the individual applies for SSI. The food stamp application [will] shall be processed at a local ISD office in accordance with Paragraph 1 of Subsection C of 8.139.110.9 NMAC above and with the following processing and timeliness standards for joint SSI/FS prerelease applications.

(a) Application Date:

(i) When a resident of an institution files a joint application for SSI and food stamp benefits with SSA prior to release from the institution, the date of application for filing purposes at the local ISD office [will] shall be the date of release.

(ii) An application [will] shall be denied upon receipt if the applicant is not otherwise eligible, except for the resident of an institution provision.

(b) Normal Processing Standard:

(i) An application [will] shall be processed as soon as possible and the applicant afforded an opportunity to participate no later than 30 days from the date of release from the institution.

(ii) Benefits for the initial month of certification [will] shall be prorated from the date of the month the applicant is released from the institution.

(c) Expedited Service: An applicant who qualifies for expedited service [will] shall receive benefits no later than the seventh calendar day following the applicant's release from the institution.

(d) Categorical Eligibility: A potential categorically eligible applicant [will] shall not be considered as such until [he/she] the individual has been released from the institution and SSA has made a final SSI eligibility determination.

(e) Restored Benefits: SSA must

notify the local ISD office of the date of the applicant's release from the institution. If for any reason notification is not provided on a timely basis, the [ISS will] caseworker shall only restore food stamp benefits retroactively to the date of release.

[B-] D. Authorized Representatives:

(1) Designation: The head of the household or the spouse or any other responsible member of the household may designate [a person] an individual who is a non-household member to act on its behalf in:

(a) Applying for food stamp benefits; or

(b) Obtaining food stamp benefits; or

(c) Using the food stamp benefits.

(i) The [ISS must] caseworker shall obtain a copy of the household's written authorization for the authorized representative and maintain it in the household's case record. No limit [will] shall be placed on the number of households an authorized representative may represent.

(ii) Even if the household member is able to make application and obtain benefits, the household should be encouraged to name an authorized representative to use the food stamp benefits in case illness or other circumstances prevent household members from using the benefits themselves.

(iii) The authorized representative's identity [will] shall be verified and a copy of the document maintained in the household's case file.

(2) Liability of Households:

The head of the household or spouse should prepare or review their application whenever possible, even though another household member or the authorized representative will actually be interviewed. The household is liable for any over-issuances resulting from incorrect or untrue information given by the authorized representative.

(3) Application: When the head of the household or spouse cannot make application, another member may apply, or an adult who is not a member of the household may be designated as the authorized representative. Nonmember adults [will] shall be designated as authorized representatives for certification purposes only if they are:

(a) Designated in writing by the head of the household, or spouse, or another responsible member of the household; and

(b) Sufficiently aware of relevant household circumstances to represent it.

(4) Changing Authorized Representative: An authorized representative may be designated at the time an application is completed; the authorized repre-

sentative ~~[will]~~ shall be named on the ID card. This does not preclude the right of the household to make a designation after it has made application to the program. If a household develops a need for a representative, or needs to change the authorized representative before, during, or after the certification process, a new authorized representative may be appointed and a new ID card ~~[will]~~ shall be issued to the household. The authorized representative designated to apply for the household may be the same individual who obtains or uses the benefits for the household, or may be a different individual.

(5) Using Food Stamp Benefits:

The authorized representative may use the food stamp benefits to purchase food for the household's consumption with the household's full knowledge and consent, provided that the authorized representative has the household's ID card.

(6) Kinds of Authorized Representatives:

(a) Emergency Authorized Representatives:

(i) An emergency authorized representative is someone who obtains benefits for a particular month when the household is unable to obtain the benefits because of unforeseen circumstances.

(ii) A household may designate in writing, on a one-time basis, an emergency authorized representative.

(iii) The household member whose signature is on the household's ID card must sign a designation authorizing the emergency authorized representative to obtain the benefits.

(b) Non-Household Members:

If the only adult living with a household is classified as an excluded household member or nonmember, that individual may be the authorized representative for the minor members who are eligible.

(c) Addiction Treatment Centers:

(i) Residents of public or private, nonprofit drug or alcohol treatment centers must apply and be certified for program participation through the use of an authorized representative who is an employee of, and designated by, the organization or institution administering the treatment and rehabilitation program.

(ii) The center may receive and spend food stamp benefits for food prepared by and/or served to the center residents, and is responsible for complying with requirements governing treatment centers.

(d) Group Homes:

(i) A resident of a group living arrangement may apply for food stamp benefits and be certified through use of an authorized representative employed

and designated by the group home; or on ~~[his/her]~~ the resident's own behalf; or through an authorized representative of ~~[his/her own]~~ the applicant's choice.

(ii) A resident of a group home does not have to be certified through an authorized representative or individually in order for one or the other method to be used.

(iii) The facility is responsible for determining if any resident may apply for benefits on ~~[his/her]~~ the resident's own behalf. The decision should be based on the resident's physical and mental ability to handle his/her own affairs. The facility is also encouraged to consult with any other agencies of the state providing other services to such a resident prior to this determination.

(iv) Applications ~~[will]~~ shall be accepted for any individual applying as a one-person household, or for any grouping of residents applying as a household.

(v) If a resident applies through a facility's authorized representative, ~~[his/her]~~ the resident's eligibility ~~[will]~~ shall be determined as a one-person household.

(vi) If a resident is certified on ~~[his/her]~~ the resident's own behalf, the benefits may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption; and/or used to purchase meals prepared and served by the facility.

(7) Disqualification:

(a) Any person who misrepresents a household's circumstances and knowingly provides false information pertaining to a household, or has made improper use of food stamp benefits, ~~[will]~~ shall be disqualified from participating as an authorized representative for up to one year.

(b) The ~~[HSS is]~~ caseworker shall be required to send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification ~~[must]~~ shall include the proposed action; the reason for the proposed action; the right to request a fair hearing; the telephone number of the office; and, if possible, the name of the person to contact for additional information.

(c) This provision is not applicable to drug or alcoholic treatment centers nor to those group homes that act as authorized representatives for their residents.

(8) Restrictions: HSD employees involved in the certification or issuance process, and retailers who are authorized to accept benefits, cannot act as authorized

representatives without the specific written approval of the ISD County Director, and then only if the County Director determines that no one else is available to serve as an authorized representative. Individuals disqualified for fraud cannot act as authorized representatives during the period of disqualification, unless the disqualified individual is the only adult member of the household able to act on its behalf and only if the County Director has determined that no one else is available to serve as an authorized representative. The County Director ~~[must]~~ shall decide separately whether such individuals are needed to apply on behalf of the household and use the benefits to purchase food.

[02/01/95, 06/01/95; 8.139.110.9 NMAC - Rn, 8 NMAC 3.FSP.111, 05/15/2001; A, 02/14/2002]

8.139.110.10 SUBMISSION OF FORMS

A. Joint ~~[Financial]~~ Cash Assistance (CA) /Food Stamp Applications:

(1) To facilitate participation in the Food Stamp Program (FSP), ~~[federal regulations require that]~~ households in which all members are applying for ~~[financial]~~ Cash Assistance (Title IV-A or GA) ~~[must]~~ shall be allowed to apply for food stamp benefits at the same time they apply for other assistance. However, food stamp eligibility and benefit amounts ~~[will]~~ shall be based solely on Food Stamp eligibility factors pending determination of ~~[financial]~~ Cash Assistance eligibility. All households ~~[will]~~ shall be certified in accordance with the notice and procedural and timeliness requirements of FSP regulations. (See subsection B of 8.139.110.11 NMAC, Combined ~~[FA]~~ CA/FS Interviews, for further information.)

(2) A household shall be notified of the Privacy Act regarding application information and shall be provided the following information:

(a) The collection of information, including the social security number of each household member, is authorized under the Food Stamp Act of 1977, as amended 7 U.S.C. 2011-2036.

(b) The information shall be used to determine whether a household is eligible or continues to be eligible to participate in the Food Stamp Program.

(c) The information shall be verified through computer matching programs.

(d) The information shall be used to monitor compliance with program regulations and for program management.

(e) The information provided may be disclosed to other Federal and State agencies for official examination, and to law enforcement officials for the purpose of

apprehending persons fleeing from the law.

(f) If a food stamp claim is filed against a household, the information on the application, including all SSNs, may be referred to Federal and State agencies, as well as private claims collection agencies, for claims collection action.

(g) That providing the requested information, including the SSN of each household member, is voluntary, but that failure to provide required information shall result in the denial of food stamp benefits to a household.

B. Items Completed:

Food Stamp Program regulations require only that an application contain the name, address and signature, or witnessed mark, of the applicant in order to be filed and registered.

C. Who Completes the

Application: The application must be completed by a household member or designated authorized representative. If an authorized representative or another appropriate person completes the application form, the applicant should still review the completed form, since ~~he/she~~ the applicant is liable for improper payments resulting from erroneous information given by an authorized representative. If an applicant needs help completing the form, the ~~[ISS-will]~~ caseworker shall determine if the applicant has a friend or relative to help complete the form. If there is no one to help the applicant, the ~~[ISS-will]~~ caseworker shall help the applicant complete the form.

D. Signature: The application must be signed by the applicant and the authorized representative, if one is designated. If the applicant receives help completing the form, that person must also sign at the bottom of the form. A person who is unable to sign his own name may sign the application with a mark and have it witnessed. A mark that is not witnessed cannot be accepted as a valid signature. The witness ~~[must]~~ shall be someone other than the interviewer.

E. Filing the Application:

(1) An application can be filed ~~[either by mail or]~~ in person, through an authorized representative, by mail or by fax or other electronic transmission, including on-line electronic transmission. An application submitted electronically or by fax and containing a handwritten or electronic signature shall be considered an acceptable application.

(2) An application shall be filed at the ISD field office serving the community or county where the applicant lives.

(3) If an applicant files ~~the~~ an application with the wrong office, that office ~~[must]~~ shall immediately forward the form to the correct office. Households ~~[will]~~ shall be informed that food stamp

applications ~~[will]~~ shall not be considered filed and the processing time limit does not begin until the application is received by the correct office.

F. Registration of the

Application: The day on which a signed application is received by an ISD office is the application date. The application ~~[must]~~ shall be registered that day or retroactively to that day as soon as possible. Processing deadlines ~~[will]~~ shall be calculated based on the application date.

G. Incomplete

Applications: Applications that do not contain, at a minimum, the applicant's name, address, and signature, or witnessed mark, are incomplete and cannot be registered. Prompt action ~~[will]~~ shall be taken to return the application form for completion of the minimum required entries. Other missing information does not constitute an incomplete application for purposes of registering the application.

H. Computer Inquiries:

Computer inquiries ~~[will]~~ shall be completed prior to certification and, where feasible, prior to the interview in order to prevent dual participation and to reveal undetected income and resources. These inquiries include scans for wage and unemployment benefits, SSI benefits, and licensed vehicle ownership, as well as for other available information and appropriate IEVS data.

I. Action on

Discrepancies:

(1) If ~~[ISD2 name clearance shows]~~ computer interfaces show a household member is currently participating in another household, the ~~[ISS-must]~~ caseworker shall discuss the situation with the applicant. The household can be certified only after the other project area has been informed of the situation and the case has been adjusted or transferred whichever is appropriate. If an inquiry shows that the case is on file in another project area, residence ~~[must]~~ shall be established. The application ~~[must]~~ shall be forwarded to the project area in which the applicant household has established residency.

(2) Available Information: The household ~~[will]~~ shall be given an opportunity to verify information from another source if information is contradictory to that already provided or is questionable. A decision on eligibility and benefit amount ~~[will]~~ shall not be delayed beyond normal application processing standards if other sources of data are unavailable. The final decision to approve or deny ~~[will]~~ shall be based on the available information.

[02/01/95, 06/01/95, 07/01/97, 06/01/99; 8.139.110.10 NMAC - Rn, 8 NMAC 3.FSP.112, 05/01/2001; A, 02/14/2002]

8.139.110.11 INTERVIEWS

A. Purpose and Scope of

Interview: The interview is an official and confidential discussion of household circumstances with the applicant. It is intended to provide the applicant with program information, and the worker with the facts needed to make a reasonable eligibility determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear and incomplete information. The scope of the interview ~~[will]~~ shall not extend beyond examination of the applicant's circumstances that directly relate to determining eligibility and benefit amounts. The interview ~~[must]~~ shall be held prior to disposition of the application.

B. Joint ~~[Financial]~~ Cash

Assistance/Food Stamp Interview: At initial application for ~~[Financial]~~ Cash Assistance ~~[(FA)](CA)~~, a single interview ~~[will]~~ shall be conducted concurrently for both ~~[Financial]~~ Cash Assistance and food stamp benefits if the client wishes to apply for both programs. Federal food stamp regulations specifically provide that applicants for both programs ~~[will]~~ shall not be required to see a different ~~[ISS]~~ caseworker or be otherwise subjected to two interviews in order to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility for food stamp benefits and ~~[Financial]~~ Cash Assistance. In an expedited food stamp certification situation, a second interview is permitted if an immediate interview for ~~[Financial]~~ Cash Assistance cannot be arranged.

C. Individuals

Interviewed: Applicants, including those who submit applications by mail, ~~[will]~~ shall be interviewed in person at the local ISD office. When circumstances warrant, the household ~~[will]~~ shall be interviewed by telephone, or at another place reasonably accessible and agreeable to both the applicant and the ~~[ISS]~~ caseworker. The applicant may bring any person he chooses to the interview.

D. Out of Office

Interviews:

(1) A food stamp applicant ~~[will]~~ shall not be required to have an office interview if the applicant is unable to appoint an authorized representative and the household has no member(s) able to come to the food stamp office because the member(s) is elderly or disabled, as defined. The office interview can also be waived if requested by any household that is unable to appoint an authorized representative who is willing and able to perform this function, and who lives in a location not served by a certification office. The County Director may also

waive the office interview on a case-by-case basis as circumstances warrant.

(4) (2) Hardship Conditions:

The office interview ~~[will]~~ shall also be waived when no household member is able to come to the office because of transportation difficulties or similar hardship. Hardship conditions include, but are not limited to, illness, care of a household member, residence in a rural area, prolonged severe weather, or work or training hours that prevent the household from attending an office interview.

E. (2) Alternate Face-to-Face/Telephone Interviews:

~~Households with employment income that must be recertified on a quarterly (3 month) basis or less, are considered to have met the interview requirement when alternate recertification interviews are conducted by telephone. This provision applies only to interviews conducted for recertification purposes. No household will have the face to face interview waived for two consecutive recertifications. The ISS must grant a face-to-face interview if requested by the household or its authorized representative.] A household shall have a face-to-face interview at initial certification and at least once every 12 months thereafter.~~

(1) A household certified for longer than 12 months is excluded

(2) At recertification, a household is considered to have met the face-to-face requirement when alternative recertification interviews are conducted by telephone.

(3) No household shall have the face-to-face interview waived for two consecutive recertifications.

~~[E.]~~ **E. Applicant Information:**

During the application interview all reasonable steps ~~[will]~~ shall be taken to make the applicant feel at ease and protect ~~[his/her]~~ the applicant's right to privacy.

(1) Providing Information: The caseworker shall explain all program information and that, to the best of their ability, the caseworker is available to assist the household in gathering information. All applicants [will] shall be provided with the following information:

- (a) ISD's nondiscrimination policy and procedures;
- (b) Complaint and fair hearing procedures and clients' rights;
- (c) Program procedures, including the use of IEVS, SDX, BENDEX information, and CSED and MVD interfaces;
- (d) Application processing standards, including time limits;
- (e) Procedures in cases of overissuance or under-issuance;
- (f) Regular Reporting household's responsibility to report changes within ten days of the date the change becomes

known to the household;

(g) Quarterly Reporting requirements for those households with earned income and recent work history:

~~[(g)]~~ (h) Requirement for cooperation with Quality Control Reviewers (QC), including penalties for non-cooperation;

~~[(h)]~~ (i) Work requirements and penalties for non-cooperation, including voluntary quit and associated penalties;

~~[(i)]~~ (j) Responsibility to contact the local ISD office to reschedule missed appointments; and

~~[(j)]~~ (k) Exemption from gross receipts tax collection by the retailer on eligible food purchased with food stamp benefits.

~~[(k) The ISS will explain all program information and that, to the best of his/her ability, he/she is available to assist the household in gathering information.]~~

(2) Fair Hearing Information:

(a) Notification of Right to Request Hearing: At the time of application each household ~~[will]~~ shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or representative, such as a legal counsel, relative, friend or other individual.

(b) Periodic Notification: At any time a household ~~[expresses to]~~ informs the local office that it disagrees with an HSD action, the household ~~[will]~~ shall be reminded of the right to request a fair hearing.

(c) Forwarding Hearing Request: A request for a hearing made either orally or in writing by a household or representative ~~[will]~~ shall be forwarded to the Fair Hearings Bureau. If it is unclear from a request what action a household or representative wishes to appeal, a clarification may be requested by HSD. The freedom to make a request for a hearing ~~[will]~~ shall not be limited or interfered with in any way.

(d) Providing a Hearing: The fair hearing process ~~[will]~~ shall be available to any household which feels an action taken by HSD is incorrect, and which affects participation of the household in the Food Stamp Program.

(e) Other Representation: If there is an individual or organization available that provides free legal representation, the household ~~[will]~~ shall be informed of the availability of that source.

(3) Agency Conference Information: A household ~~[will]~~ shall be informed of the availability of an agency conference to resolve a dispute. ~~[and HSD will offer]~~ HSD shall schedule an agency conference ~~[to]~~ for a household when a dispute arises.

(a) Denial of Expedited Service:

An agency conference ~~[will]~~ shall be offered to a household which wishes to contest a denial of expedited service. An agency conference for such a household ~~[will]~~ shall be scheduled within two (2) working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(b) Adverse Actions: HSD may also offer an agency conference to a household adversely affected by an HSD action.

(c) Use of Agency Conference: HSD ~~[will]~~ shall inform a household that use of an agency conference is optional and that it ~~[will]~~ shall in no way delay or replace the fair hearing process.

~~[F.]~~ **G. Scheduling Interviews:**

The interview on an initial application ~~[will]~~ shall be scheduled within ten (10) working days, and, to the extent possible, at a time that is most convenient for the applicant.

~~[G.]~~ **H. Missed Interviews:**

HSD shall notify a household that it missed its first interview appointment and that the household is responsible for rescheduling a missed interview. If the household contacts the caseworker within the 30-day application-processing period, the caseworker shall schedule a second interview. [If an applicant fails to appear for the first interview, responsibility for scheduling a second appointment lies with the applicant.] When the applicant contacts the local ISD office, either orally or in writing, the ~~[ISS will]~~ caseworker shall reschedule the interview as soon thereafter as possible within the 30-day processing period, without requiring the applicant to provide good cause for failing to appear. If the applicant does not contact the office or does not appear for the rescheduled interview, the application ~~[will]~~ shall be denied on the 30th day (or the next work day) after the application was filed (see Section 8.139.110.12 NMAC).

~~[H.]~~ **L. Verification Standards:**

Verification is use of third-party information or documentation to establish the accuracy of statements on the application.

(1) Initial Certification:

Verification is mandatory for the following information prior to initial certification for both new and reopened cases.

(a) Financial Information:

- (i) Gross nonexempt income,**
- (ii) Resources.**
- (b) Any of the following if the expense would result in a deduction:**
 - (i) actual utility expenses,**
 - (ii) continuing shelter expenses,**

(iii) dependent care expenses,

(iv) deductible medical expenses including the amount of reimbursements;

(v) legally obligated child support expenses, and amount actually paid.

(vi) If any of the above expenses will not result in a deduction, verification ~~is not~~ shall not be required (for example, less than \$35 in medical expenses, or shelter expenses that do not exceed 50% of income after all other deductions).

(c) Nonfinancial Information:

(i) Residence,

(ii) citizenship and alien status,

(iii) identity of the applicant and authorized representative,

(iv) if designated; household size and composition and any other information, if questionable;

(v) disability, if necessary, and

(vi) ~~and~~ social security numbers.

(vii) Eligibility or issuance of benefits ~~with~~ shall not be delayed solely to verify the social security number of a household member.

(2) Recertification: Verification of the following is mandatory at recertification or for cases reopened within 30 days of expiration:

- (a) A change in income if the source has changed or the amount has changed by more than \$25.00.
- (b) A change in actual utility expenses if the source has changed or the amount has changed by more than \$25.00.
- (c) Previously unreported medical expenses, and total recurring medical expenses which have changed by more than \$25.00.
- (d) New Social Security numbers ~~with~~ shall be verified as detailed in 8.139.410.8 NMAC.
- (e) Any other information which has changed or is questionable.
- (f) Unchanged information ~~with~~ shall not be reverified unless it is incomplete, inaccurate, inconsistent, or outdated.

(3) Quarterly Reporting: The verification standards for Quarterly Reporting is set forth at 8.139.120.9 NMAC.

~~(3)~~ **(4) Providing Verification:** The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The ~~ISS with~~ caseworker shall assist a household in obtaining verification, provided the household is cooperating in the application process. A household may supply docu-

mentary evidence in person, through the mail or through an authorized representative. A household ~~with~~ shall not be required to supply verification in person at the food stamp office or to schedule an appointment to provide such verification. The ~~ISS with~~ caseworker shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

~~(4)~~ **(5) Designating a Collateral Contact:** Whenever evidence is insufficient to make a firm determination of eligibility or benefit amount, or cannot be obtained, the ~~ISS~~ caseworker may require a collateral contact or a home visit. The ~~ISS generally, with~~ caseworker shall rely on the household to provide the name of a collateral contact. A household may request assistance in designating a collateral contact. The ~~ISS is not~~ caseworker shall not be required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide accurate third-party verification. When a collateral contact designated by the household is unacceptable, the ~~ISS~~ caseworker shall either designate another collateral contact, ask the household to designate another collateral contact, or provide another alternative form of verification such as a home visit. The ~~ISS~~ caseworker is responsible for obtaining verification from acceptable collateral contacts.

~~(5)~~ **(6) Documentation:** A case file ~~must~~ shall be documented to support eligibility, ineligibility, and benefit amount determination. Documentation ~~must~~ shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

[02/01/95, 06/01/95, 10/01/95, 06/01/99; 8.139.110.11 NMAC - Rn, 8 NMAC 3.FSP.113, 05/01/2001; A, 02/14/2002]

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

This is an amendment to 8.139.120 NMAC, Sections 9, 10, 11 and 12.

8.139.120.9 QUARTERLY REPORTING: Quarterly Reporting is a reporting requirement for certain households that receive food stamps.

A. Certification Period: A household subject to Quarterly Reporting:

- (1) Shall be assigned a 12-month certification period.
- (2) Shall remain subject to Quarterly Reporting throughout the certifi-

cation period.

B. Quarterly Reporting Households: The Quarterly Reporting requirements shall apply to a household:

- (1) with earned income;
- (2) with a recent history of earned income that is defined as:
 - (a) a member has had employment in the past 6 months; or
 - (b) a member is currently receiving Unemployment Compensation Benefits.

C. Households Excluded from Quarterly Reporting: The Quarterly Reporting Requirements shall not apply to:

- (1) a migrant and seasonal farm worker household;
- (2) a household in which all members are homeless;
- (3) a household with no earned income or no recent history of earned income;
- (4) a household in which all members are elderly or disabled; and
- (5) a household whose only income is from self-employment;

D. Transition to/from Quarterly Reporting:

- (1) A household shall be transitioned to or from the Quarterly Reporting requirement at application or recertification.
- (2) A household whose status changes to Quarterly Reporting because of a change in household composition shall be transitioned to Quarterly Reporting effective the month following the month the change is reported.

(i) A household whose certification period is less than 12 months at the time the household's status changes to Quarterly Reporting shall be assigned a 12-month certification period beginning with the first month of the previous certification period. The household shall be subject to Quarterly Reporting for the remainder of the certification period.

(ii) A household whose certification period is for longer than 12 months at the time the household's status changes to Quarterly Reporting shall be subject to Quarterly Reporting for the remainder of the assigned certification period.

E. Quarterly Reporting Requirement: A household shall be required to report at intervals set forth in Subsection G of 8.139.120.9 NMAC and verify:

- (1) a change in household composition, whether a member has moved in or out of the home, and the date the change took place;
- (2) money from employment;
- (3) unearned income;
- (4) opening of a savings or checking account;
- (5) resources which exceed the resource limit;

(6) dependent care expense; and
 (7) change in residence and the change in shelter and utility expenses.
 (8) changes in medical expenses;
 (9) changes in child support obligation;

F. Budgeting Methodology for Quarterly Reporting:

(1) Initial Application:
 Prospective budgeting shall be used for an applicant household at initial application and at recertification as set forth at 8.139.500.9 NMAC.

(2) Prospective Budgeting:

(a) Methodology for determining eligibility and payment for processing a Quarterly Report is specified in this Subsection.

(b) Eligibility for the Food Stamp Program is determined prospectively as set forth in 8.139.500.9 NMAC.

(c) Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

(3) Changes in Household Composition: A person added to a household shall have eligibility determined prospectively beginning in the month following the month the report is made.

(4) Anticipating Income: In determining a household's eligibility and payment amount, the income already received and any income a household expects to receive during the certification period shall be used.

(a) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(b) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(c) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(d) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(e) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

(5) Earned Income:

(a) Income from the month prior to the month the Quarterly Report is due shall be used to project monthly income, provided that the income is expected to continue.

(i) If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a

longer period of past time may be used.

(ii) If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(b) None of the methods described above may give the most accurate estimate of monthly earnings due to unique circumstances which may occur. In such cases, the caseworker shall use whatever method gives the most accurate estimate of earnings.

(c) An income projection shall be considered valid for the period between when Quarterly Reports are due.

(6) Income Received Less Frequently than Monthly: The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

(7) Contract Income: A household that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis. Contract income that is annualized shall only be verified when a new contract is established.

(8) Using Exact Income: Exact income, rather than averaged income, shall be used if income is received more frequently than weekly.

(9) Self-Employment:

(a) Determination of self-employment income is set forth at Subsection E of 8.139.520.10 NMAC. Verification standards of business and self-employment income is set forth at Paragraph (2) of Subsection B of 8.100.130.14 NMAC.

(b) A household subject to Quarterly Reporting requirements, and self-employment is annualized, shall not be required to report changes in the self-employment income. Only the income received from other sources shall be subject to Quarterly Reporting requirements as set forth in this section.

(c) If significant changes have occurred because of a substantial increase or decrease in business and averaged income will not accurately reflect the self-employed individuals' income, the self-employment income shall be calculated on the basis of anticipated, not prior, earnings.

(d) A household subject to Quarterly Reporting Requirements and the self-employment is not annualized shall be

subject to reporting self-employment income on the Quarterly Report.

(i) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year.

(ii) If the self-employment enterprise has been in operation for such a short time that there is insufficient information to make a reasonable projection, a household shall be required to report income at shorter intervals until there is enough information to make a longer projection of anticipated income.

(iii) Seasonal Income: Self-employment income that is intended to meet a household's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

(e) Determining Monthly Business or Self-Employment Income: For the period of time over which self-employment income is averaged, the individual's monthly self-employment income is determined by adding all self-employment income, including capital gains, and excluding allowable costs of producing the self-employment income, and dividing the resulting self-employment income by the number of months over which the income will be averaged.

(f) A household that fails to provide verification of an allowable deduction with the Quarterly Report shall not be allowed the deduction. The caseworker shall process the report if all mandatory verification has been provided.

(10) Unearned Income: For purposes of anticipating future income, unearned income from the month prior to the month the report is due shall be used, provided that the income is expected to continue.

(11) Use of Conversion Factors: Conversion factors shall be used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equally for the months in the certification period or the Quarterly Reporting period.

(a) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.

(b) Income received weekly shall be multiplied by 4.3.

(c) Income received biweekly shall be multiplied by 2.15.

(12) Rounding of Income When Using Conversion Factors: Averaged income shall be rounded prior to application of the conversion factor. If the cents are

\$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

G. Time Limits for Submission and Processing a Quarterly Report

(1) The first month of the Quarterly Report period shall begin in the month of approval or the first month of the certification period.

(2) The Quarterly Report form shall be mailed to a household in the month prior to the date the report is due.

(3) A household shall be required to return a completed Quarterly Report by the fifth calendar day of the month the Quarterly Report is due. If the fifth calendar day falls on a weekend or holiday the Quarterly Report shall be due the next working day.

(a) The first food stamp Quarterly Report shall be due the second month following the month of approval.

(b) A household shall be required to submit a Quarterly Report:

(i) by the fifth calendar day of a month a Quarterly Report is due; and

(ii) every three months thereafter for the duration of the certification period.

(4) The caseworker shall review the Quarterly Report and verification for completeness within 10 days of receipt of a Quarterly Report form:

(a) If the form is complete and all verification provided to process the Quarterly Report form, the caseworker shall complete the processing of the form within 10 days of receipt.

(b) If the form is incomplete, lacking verification, or questionable verification is provided, the caseworker shall notify the household in writing of what needs to be completed or verification which needs to be provided.

(i) A Quarterly Report form that is incomplete or not signed shall be returned to the household for completion.

(ii) A Quarterly Report form that is complete, but is lacking sufficient verification to process, shall be maintained in the case file and written notification sent to the household of the verification needed to process the report.

(5) A notice shall be issued to a household by the 20th day of the month in which a report is due, to notify a household that a completed Quarterly Report has not been received by the household.

(6) A household that fails to submit a complete Quarterly Report form by the end of the month in which it is due, shall be issued an adequate notice of closure.

H. Form Requirements

for Quarterly Reporting: The Quarterly Report form shall specify:

(1) the date by which a household must submit the form for continued receipt of timely benefits;

(2) the consequences of submitting a late or incomplete form;

(3) that verification must be submitted with the Quarterly Report;

(4) where to call for help in completing the form; and

(5) consequences for providing incorrect information.

I. Reporting Requirements Between Quarterly Reports:

(1) A Quarterly Reporting household shall not be required to report changes subject to the Quarterly Reporting requirement as found in Subsection E of 8.139.120.9 NMAC prior to the date the Quarterly Report form is due or during the period in between Quarterly Reports. These include:

(a) a change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(b) money from employment;

(c) unearned income;

(d) purchase of a vehicle;

(e) opening of a savings or checking account;

(f) resources which exceed the resource limit;

(g) dependent care expense; and

(h) change in residence and the change in shelter and utility expenses.

(2) Changes reported prior to the date the Quarterly Report is due shall be processed according to change processing requirements as found in 8.139.120.10 NMAC.

J. Disaster Victims: A household certified under the ongoing Food Stamp Program and subject to Quarterly Reporting, shall be required to comply with Quarterly Reporting requirements during the disaster period. The household is responsible for submitting the required information as outlined in 8.139.120.9 NMAC, to the office that handles its ongoing case.

[02/01/95, 10/01/95, 06/15/96, 09/14/96, 11/01/96, 07/01/98, 06/01/99; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 05/15/2001; 8.139.120.9 - N, 02/14/2002]

8.139.120.10 CHANGE PROCESSING: If during a certification period, changes occur that affect eligibility or benefit amount, the ~~ISS~~ ~~must~~ caseworker shall take action to adjust the household's eligibility or food stamp benefit amount.

A. Household Responsibilities:

(1) At Application: An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview. Changes occurring after the interview, but before the date of the approval notice, must be reported by the household within 10 days of the date the household receives its approval notice.

(2) Change Reporting Requirements for ~~[Certified]~~ Regular Reporting Households: A household must report changes within ten (10) days of the date a change becomes known to the household. All households are required to report:

(a) Income: Changes in the source of income, such as starting or losing a job, changing employers, or gaining or losing a source of unearned income. Households with earned income are also required to report a change in part-time or full-time employment status and a change in wage rate or salary. All households are required to report a change of more than \$25.00 in unearned income, except that changes in TANF or GA cash assistance amount, cost of living increases (COLAs), and mass changes in Social Security and SSI benefits do not have to be reported. HSD has prior knowledge of these changes and action is taken in accordance with mass change procedures in Subsection E of 8.139.120.9 NMAC.

(b) Changes in household composition, such as when an individual moves into or leaves the household;

(c) Changes in residence and the resulting change in shelter costs;

~~[(d) Acquisition of a vehicle];~~

~~[(e)] (d)~~ When cash on hand, stocks, bonds and/or money in a bank account reach or exceed \$2,000, or \$3,000 for elderly/disabled households;

~~[(f)] (e)~~ Changes in the legal obligation to pay child support, including termination of the obligation. A household with less than a 3-month record of child support payments ~~[with]~~ shall be required to report changes greater than \$50.00 from the amount used in the most recent certification action.

~~[(g)] (f)~~ No change reporting requirements may be imposed except as provided in (a) through ~~[(h)]~~ (e) above.

(3) Time Limits: The 10-day period begins with the date the change becomes known to the household. The change is considered reported on the date the report of change is received by the local county office or, if mailed, the date of the postmark on the household's report plus three days mailing time, whichever is earlier. Households ~~[with]~~ shall be encouraged to use a change report form to document changes, although changes may also be

reported by personal visit or telephone. In the absence of a written report, a 13-day advance notice is required if the change ~~will~~ shall result in a reduction or termination of benefits.

(4) Quarterly Reporting Households:

(a) A household subject to Quarterly Reporting requirements shall not be required to report changes between Quarterly Reports.

(b) A household subject to Quarterly Reporting shall be required to report changes on the Quarterly Report as specified 8.139.120.9 NMAC.

(c) ISD shall act on any change in accordance to Subsection B of 8.139.120.10 NMAC if a household subject to Quarterly Reporting reports and verifies a change prior to the date a Quarterly Report is due.

~~(4)~~ **(5) Reporting Medical Expenses:**

A household may voluntarily report changes in medical expenses which occur during the certification period. Changes in medical expenses ~~will~~ shall be handled in accordance with policy found in (c) of Paragraph 1 of Subsection B of 8.139.120.9 ~~10~~ NMAC and Paragraph 6 of Subsection D of 8.139.520.11 NMAC.

B. HSD Responsibilities:

The ~~ISS will~~ caseworker shall inform the household of its responsibility to report changes. The ~~ISS is~~ caseworker shall be required to take action on any change reported by the household to determine if the change affects eligibility or benefit amount. The ~~ISS will~~ caseworker shall document the date a change is reported, and whether the change affects eligibility or food stamp benefit amount.

(1) Action on Changes:

(a) When a household reports a change, the ~~ISS must~~ caseworker shall take action to determine the household's eligibility and/or food stamp benefit amount within ten days of the date the change is reported.

(b) For changes that result in a decrease or termination of household benefits, the ~~ISS will~~ caseworker shall act on the change as follows:

(i) If the ~~ISS~~ caseworker receives a written report from the household that meets the standards of Subsection C of 8.139.120.10 ~~11~~ NMAC, action ~~will~~ shall be taken for the following month without an advance notice of adverse action. The household ~~will~~ shall be provided with adequate notice. If the certification period will expire before the expiration notice time limit, no action ~~will~~ shall be required to reduce or terminate benefits.

(ii) If the change is reported by any other means, e.g., by phone, in person, etc., within ten days, the ~~ISS will~~ caseworker shall take action to issue a

notice of adverse action (Subsection B of 8.139.120.10 ~~11~~ NMAC) to reduce or terminate benefits effective the month following the month the adverse action time limit expires. If the certification period will expire before the expiration of the adverse action time limit, no action ~~will~~ shall be required to reduce or terminate benefits.

(c) During the certification period, the ~~ISS will~~ caseworker shall not act on changes in medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, requires the ~~ISS~~ caseworker to contact the household for verification. The ~~ISS will~~ caseworker shall act only on those changes in medical expenses that are learned about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) Increased Benefits:

(a) For changes resulting in an increase, other than changes described in (b) below, the ~~ISS will~~ caseworker shall make the change effective no later than the first benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date).

(b) For changes resulting in an increase in food stamp benefits because of the addition of a new household member who is not a member of another certified household or a decrease of \$50.00 or more in the household's gross monthly income, the ~~ISS will~~ caseworker shall make the change effective not later than the first food stamp benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date). In no event ~~will~~ shall these changes take effect any later than the month following the month the change was reported. If the change is reported timely but the increase cannot be made effective the following month, the ~~ISS will~~ caseworker shall issue a supplement to the household in the following month.

(c) Providing Verification: The household ~~will~~ shall be allowed 10 days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits ~~will~~ shall be effective in accordance with (a) and (b) above. If verification is not provided at the time a change is reported, the household ~~will~~ shall be allowed 10 days, plus 3 days if a notice is mailed, to provide verification. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase ~~will~~ shall be effective in the month following the month the verification is provided. If the household fails to provide required verification,

its food stamp benefit amount ~~will~~ shall revert to the original benefit amount.

(3) Decreased Benefits: When a household timely reports a change which will decrease benefits, the ~~ISS will~~ caseworker shall issue an adverse action notice to the household (Subsection B of 8.139.120.10 ~~11~~ NMAC). If the adverse action time limit expires in the following month, there is no overissuance in the following month and the household is entitled to the greater benefit amount. The decrease ~~will~~ shall be effective in the month following the month the notice expires.

(4) Termination of Benefits: When the household reports a change which will result in a termination of benefits, the ~~ISS will~~ caseworker shall issue an adverse action notice.

(a) If the adverse action time limit expires in the following month, there is no overissuance to the household in the following month and the household ~~will~~ shall be entitled to the greater benefit amount. No claim ~~will~~ shall be filed.

(b) If the adverse action time limit will expire after the certification period ends, action ~~will~~ shall be taken to terminate benefits; the certification period ~~will~~ shall be allowed to expire. The ~~ISS will~~ caseworker shall document the change in the case record.

(5) No Change in Food Stamp Benefit Amount: When a reported change has no effect on the food stamp benefit amount, the ~~ISS will~~ caseworker shall document the change in the case file and notify the household of the receipt of the report and that there is no change in food stamp benefits.

C. Failure to Report Changes:

(1) If the ~~ISS~~ caseworker discovers that the household failed to report a change as required, ~~he/she will~~ the caseworker shall evaluate the change to determine whether the household received benefits to which it was not entitled. After verifying the change, the ~~ISS will~~ caseworker shall initiate a claim against the household for any month in which the household was overissued food stamp benefits. The first month of the overissuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim ~~will~~ shall be established because of a change in circumstances that a household is not required to report in accordance with Paragraph 2 of Subsection A of 8.139.120.10 ~~11~~ NMAC above.

(2) Increased Benefit Amount: When a household fails to make a timely

report of a change which will result in an increased food stamp benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 days after the date the change was reported.

D. Other Changes:

(1) Eligibility Standard: When a household becomes entitled to a different eligibility standard, the ~~[ISS will]~~ caseworker shall apply the new standard whenever there is a change in household eligibility, benefit amount, or certification period, whichever occurs first.

(2) Reconstituted Household: If members in the household separate into two or more households, the individuals who left the original household ~~[will]~~ shall not be eligible for separate status in the month the change occurs. An adverse action notice is required whenever members leave the household. If the adverse action time limit expires in the month the change occurs, the individuals in the reconstituted household may be certified in the month following the month the change occurs. If the notice of adverse action time limit expires in the month following the month the change occurred, the reconstituted household ~~[will]~~ shall not be certified until the month following the month the notice time limit expires.

(3) Shortened Certification Period: Whenever a determination is made that a household's certification period must be shortened, the household is entitled to an expiration notice. A household ~~[will]~~ shall be informed that its certification period ~~[will]~~ shall end the month following the month the expiration notice is sent. The household ~~[must]~~ shall be given an opportunity to timely reapply for benefits.

(4) Unreported Changes: The ~~[ISS will]~~ caseworker shall act on all changes of which ~~[he/she]~~ the caseworker becomes aware. At a minimum, this means documenting changes in the case record. All discrepancies and questionable information ~~[will]~~ shall be resolved to make sure that the correct food stamp benefit amount is issued to the household.

(5) Noncompliance With Program Requirements or Fraud:

(a) Intentional Failure to Comply or Fraud : No household ~~[will]~~ shall receive an increase in food stamp benefits when its ~~[financial]~~ Cash Assistance payment is reduced for intentional failure to comply with the ~~[financial]~~ Cash Assistance program's eligibility requirements or for an act of fraud. A ~~[financial]~~ Cash Assistance program is defined a means-tested federal, state, or local welfare or public assistance

program, governed by welfare or public assistance laws or regulations, which distributes public funds. Such programs include, but are not limited to, Supplemental Security Income (SSI), TANF (Title IV-A), and federal or state General Assistance (BIA-GA and GA). Failure to comply ~~[will]~~ shall be determined as provided in Paragraph 3 of Subsection I of 8.139.520.9 NMAC.

(b) Verification of Recoupment: Agencies administering means-tested, publicly funded assistance programs provide recipients with written advance notice of proposed changes in benefit amounts. Such notices provide information which ~~[will]~~ shall determine if the reduction in ~~[financial]~~ cash assistance is because of a properly reported change in circumstances. In most cases, the notice ~~[will]~~ shall document whether the reduction is because of a recoupment of overpaid benefits resulting from intentional failure to report changes. If the notice is not detailed enough to make a determination, the agency which initiated recoupment ~~[will]~~ shall be contacted to obtain the necessary information. Food stamp benefits ~~[will]~~ shall not be delayed beyond normal processing standards pending the outcome of this determination.

(c) Calculating Benefits: When a recipient's assistance benefits are decreased to recoup an overpayment, that portion of the decrease that is the recoupment ~~[must]~~ shall first be identified. The recoupment is the amount of decrease attributed to the repayment of benefits overissued. If a Title IV-A recipient intentionally underreports income, the Title IV-A grant is first reduced to reflect the corrected income, then reduced further by the recoupment amount. In such a case, the food stamp calculation would reflect the Title IV-A amount reduced because of income, but not the second reduction caused by recoupment.

E. Mass Changes: Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it. These changes include, but are not limited to, increases in excluded or deducted items or amounts. Mass changes affecting income include annual adjustments to Social Security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions. Information concerning mass change notice and hearing requirements are set forth in 8.100.180.15 NMAC.

(1) Federal Changes: Authorized adjustments which may affect the food stamp benefit amount for participating households include the Maximum Food Stamp Allotment, standard deduction,

excess shelter and dependent care deductions, and income eligibility standards. These changes go into effect for all households annually on October 1. Adjustments to federal standards are made prospectively.

(2) Mass Changes in Federal Benefits: Cost of living increases and any other mass changes in federal benefits, such as Social Security and SSI benefits, ~~[will]~~ shall be treated as mass changes for food stamp purposes. The Human Services Department is responsible for automatically adjusting a household's food stamp benefit amount to reflect such a change. Households ~~[will]~~ shall not be responsible for reporting these changes.

(3) Mass Changes in Public Assistance: When overall adjustments to ~~[Financial]~~ Cash Assistance payments are made, corresponding adjustments in food stamp benefits ~~[will]~~ shall be handled as a mass change. Households ~~[will]~~ shall be given advance notice of any adjustment in the food stamp benefit amount. If a household requests a fair hearing, benefits ~~[will]~~ shall continue at the former amount only if the issue being appealed is that eligibility or food stamp benefit amount was determined incorrectly.

(4) Utility Standard: Authorized adjustments ~~[will]~~ shall be effective for all October food stamp issuances. Households whose certification periods overlap annual adjustments in the Standard Utility Allowance ~~[will]~~ shall be informed at the time of certification that the adjustment ~~[will]~~ shall be effective in October; the household ~~[will]~~ shall be informed of the adjusted benefit amount, if known at the time of certification. Adjustments in the Standard Utility Allowance are made prospectively.

(5) Notice of Mass Changes: Adverse action notices are not required for mass changes resulting from federal adjustments to eligibility standards, the Maximum Food Stamp Allotment, standard deduction, shelter deduction, and State adjustments to the utility standard. Announcement of anticipated mass changes may be made through the media, posters in ISD offices, and other likely places frequented by households, or through a general notice mailed to a participating household. When HSD makes a mass change in food stamp eligibility or benefit amount affecting the entire caseload or a part of it, affected households ~~[will]~~ shall be mailed a notice of any change, reduction or termination of benefits. HSD ~~[will]~~ shall issue a notice to affected households as far in advance of the household's next scheduled issuance date as is reasonably possible, but by no later than the date the affected benefit is issued.

[02/01/95, 07/01/98; 8.139.120.10 NMAC - Rn & A, 8.139.120.9 NMAC, 02/14/2002]

8.139.120.~~10~~ 11 CHANGE NOTICES

A. Agency Responsibilities:

(1) The ~~[ISS]~~ will caseworker shall take action on any change reported by a household, and on any change which becomes known through other sources.

(2) The household ~~[will]~~ shall be issued a change notice:

(a) If there is a reduction or termination of benefits, the household ~~[will]~~ shall be issued an adverse action notice, unless the change has been reported by the household in writing.

(b) If the household reports the change in writing, advance notice of the change in benefit amount is required before the household's next issuance.

(c) If there is no change in the benefit amount, the household ~~[will]~~ shall be notified that the change resulted in no change in benefit amount.

(3) If a household receiving ~~[financial]~~ shall cash assistance reports a change, it ~~[will]~~ shall be considered to have also reported the change for food stamp purposes. A notice ~~[will]~~ shall be sent to the household acknowledging the reported change, even if there is no change in benefits. A notice of adverse action ~~[will]~~ shall be sent if there is a reduction or termination in the food stamp benefit amount and the change was not reported in writing.

B. Notice of Adverse Action:

(1) Prior to any action to reduce or terminate a household's food stamp benefits within the certification period, the household ~~[will]~~ shall be provided with a timely and adequate advance notice before the adverse action is taken, unless the change was reported by the household in writing. A written change report submitted by the household is subject to the adequate notice requirements in subsection C of 8.139.120.~~10~~ 11 NMAC.

(2) At a minimum, the adverse action notice ~~[will]~~ shall include the following information:

(a) Proposed action and reason for the action;

(b) Month in which the change takes effect;

(c) Adjusted benefit amount;

(d) Household's right to request a fair hearing, circumstances under which the household can continue benefits at the greater amount, and deadline dates for requesting a hearing;

(e) Household's liability for any benefits overissued if the decision of the fair hearing is that the Department took the correct action;

(f) General information on whom to contact for additional information,

including the right to representation by Legal Services.

(3) Individual notices of adverse action ~~[will]~~ shall not be provided when:

(a) There is a mass change;

(b) The ~~[ISS]~~ will caseworker determines on the basis of reliable information that the household has moved from the project area;

(c) The ~~[ISS]~~ will caseworker determines on the basis of reliable information that all members of a household have died;

(d) The household has received an increased benefit amount to restore lost benefits, the restoration is complete, and the household has been notified in writing of the date the increased benefit amount would terminate.

(e) The household's benefit amount varies from month to month within the certification period to take into account changes anticipated at the time of certification, and the household was notified of such variations at the time of certification;

(f) The household applied for ~~[financial]~~ shall Cash Assistance and food stamp benefits at the same time, has been receiving food stamp benefits pending approval of ~~[financial]~~ shall Cash Assistance, and the household was notified at the time of certification that food stamp benefits would be reduced upon approval of the ~~[financial]~~ shall Cash Assistance grant;

(g) A household member is disqualified for Intentional Program Violation, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of the household member.

(h) The household was certified on an expedited basis, is assigned a certification period longer than one month, and verification has been postponed. The household must have received written notice that receipt of benefits beyond the month of application is contingent on the household providing the postponed verification.

(i) The eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement is terminated because the treatment center or group living arrangement loses either its certification or its status as authorized representative.

(j) The household voluntarily requests, in writing or in the presence of the ~~[ISS]~~ will caseworker, that its participation be terminated.

C. Adequate Notice: If a change was reported in writing that will result in a reduction or termination in food stamp benefits, the household ~~[will]~~ shall be provided with adequate advance written notice confirming the change. Adequate notice does not preclude the household's right to request a fair hearing. The household ~~[will]~~ shall be notified that its benefits

are being reduced or terminated no later than the date the household will receive, or would have received, its food stamp benefits. Adequate notice ~~[will]~~ shall be provided when changes reported in writing meet the following conditions:

(1) The household reports the information which results in the reduction or termination;

(2) The reported information is in writing and signed by a member of the household;

(3) The ~~[ISS]~~ will caseworker can determine the household's reduced benefit amount or ineligibility based solely on the information provided by the household in the written report;

(4) The household retains its right to a fair hearing;

(5) The household retains its right to continued benefits if the fair hearing is requested within the advance notice time limit;

(6) The ~~[ISS]~~ will caseworker continues the household's previous benefit amount if required, within five working days of the household's request for a fair hearing.

[02/01/95; 8.139.120.11 NMAC - Rn & A, 8.139.120.10 NMAC, 02/14/2002]

8.139.120.~~10~~ 12 TRANSFER OF HOUSEHOLDS:

When a household transfers from one project area to another, the households case record and computer file ~~[must]~~ shall be transferred accordingly. Procedures for handling households which transfer between project areas within the state and between offices within a single project area are described below.

A. Transfer of Inactive

Cases: Inactive cases are those that have been certified and are subsequently closed. The ~~[ISS]~~ will caseworker in the new project area is responsible for requesting that the case record be transferred. The former project area is responsible for transferring case records and making sure they are complete.

B. Transfer of Active

Cases: Active cases are those presently certified.

(1) Timely Reporting:

Transfers within the state ~~[will]~~ shall be considered like any other reported change in circumstances. The household must timely report a move and verify its new address and shelter expenses, as well as any change in household composition and income, before benefits may continue and/or be issued (see Paragraph 2 of Subsection A of 8.139.120.~~9~~ 10 NMAC). The former project area ~~[will]~~ shall update the household's address on its computer file and transfer the case in active status to the new project area. The new project area ~~[will]~~ shall verify the

household's new circumstances, including but not limited to, address, shelter expenses, income, and household composition (see Paragraph 1 of Subsection B of 8.139.120.9]10 NMAC).

(2) **Not Reported:** If a project area becomes aware that a household has moved but has not been informed of a new in-state address, either by the household or its designee or by another project area, participation [with] shall be terminated immediately based on unverified residence. If the household wishes to continue participation, it must file a new application.

C. Procedures for Nonreceipt of Benefits: If a household which has moved to a different project area has not received its current month's food stamp benefits, action required by the [SS with] caseworker shall depend on circumstances described below:

(1) If the food stamp benefits are returned to the Central Mail Issuance Unit, reissuance is authorized by the new project area to the household's address in the new project area.

(2) If the food stamp benefits are not returned to the Central Mail Issuance Unit, an affidavit [with] shall be submitted by the new project area, as described in Subsection G of 8.139.610.14 NMAC, Replacement of Benefits Lost in the Mail, even though the original issuance was from the former project area. The new project area [must] shall make sure that the household's residence and mailing address are changed prior to submitting the affidavit. [05/15/97; 8.139.120.12 NMAC - Rn & A, 8.139.120.11NMAC, 02/14/2002]

8.139.120.13]13 COOPERATION WITH LAW ENFORCEMENT AGENCIES

A. Notwithstanding any other provision of law, upon written request, HSD [with] shall make available to any federal, state, or local law enforcement officer the address, social security number, and photograph (if available) of any household member, if the officer furnishes HSD with the name of the individual and notifies HSD that:

(1) The individual is fleeing to avoid prosecution, or custody or confinement after conviction for a crime, or attempt to commit a crime, that under the law of the place the member is fleeing is a felony, or in New Jersey is a high misdemeanor; or

(2) The individual is violating a condition of probation or parole imposed under federal or state law.

B. Information [with] shall be provided if it is needed for the officer to conduct an official duty related to Paragraphs (1) or (2) of Subsection A of 8.139.120.13 NMAC above; locating or

apprehending the individual as an official duty; and the request is being made in the proper exercise of an official duty.

C. Providing information to law enforcement [with] shall not interfere with the Department's responsibility to immediately report to the Immigration and Naturalization Service (INS) the ineligibility of any individual who is present in the United States in violation of the Immigration and Nationality Act. [8.139.120.13 NMAC - Rn & A, 8.139.120.12 NMAC, 02/14/2002]

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

This is an amendment to 8.139.400 NMAC, Sections 12 and 13.

8.139.400.12 I N E L I G I B L E HOUSEHOLD MEMBERS: The following individuals [with] shall be included as household members for the purpose of defining a household, but [with] shall not be included as eligible members when determining the household's size, comparing the household's monthly income with the income eligibility standard, or assigning a benefit amount by household size.

A. Excluded Household Members:

(1) **Ineligible Aliens:** Individuals who do not meet citizenship or eligible alien status requirements, or eligible sponsored alien requirements. The income and resources of such individuals [with] shall be counted in determining the household's eligibility and benefit amount in accordance with the requirements in Subsection C of 8.139.520.10 NMAC.

(2) **Ineligible Students:** Individuals enrolled in an institution of higher education who are ineligible because they do not meet the student eligibility requirements in Subsection A of 8.139.400.11 NMAC. Ineligible students are considered as non-household members in determining the household's eligibility and benefit amount. Income and resources are considered in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. Disqualified Household Members:

(1) **SSN Disqualified:** Individuals who are disqualified for refusal or failure to provide a Social Security Number.

(2) **Work Noncompliance:** Individuals who have been disqualified for failure or refusal to comply with work requirements.

(3) **IPV:** Individuals disqualified

for an Intentional Program Violation.

C. Drug Disqualifications:

An individual convicted under a federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved, and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]), [with] shall be permanently ineligible to participate in the Food Stamp Program. An individual who receives SSI and is ineligible to participate because of a drug related felony conviction, shall not be eligible and shall not be included in the household based on categorical eligibility requirements of the Food Stamp Program.

(1) **Effective Date:**

Disqualification [with] shall not apply to convictions which occurred on or before August 22, 1996.

(2) **Household Declaration:**

Each applicant for food stamp benefits is required, during the application process, to state in writing whether [he/she] the applicant or any other household member, has been convicted of possession, use or distribution of a controlled substance.

(3) **Treatment of Income and Resources:** The income and resources of a disqualified individual [with] shall be considered in their entirety to the household while the individual remains in the home.

D. Disqualification for Fleeing Felons and Probation/Parole Violators:

No member of an otherwise eligible household [with] shall be eligible to participate in the FSP as a member of the household during any period in which the individual is:

(1) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime or attempt to commit a crime, that is a felony, or in New Jersey a high misdemeanor, under the law of the place from which the individual is fleeing; or

(2) Violating a condition of probation or parole imposed under a federal or state law.

(3) **Treatment of Income and Resources:** The income and resources of an individual described in [(+) and (-) above with] Paragraphs (1) and (2) of Subsection D of 8.139.400.12 NMAC shall be attributed in their entirety to the household while the individual is in the home.

[02/01/95, 10/01/95, 05/15/97; 8.139.400.12 NMAC - Rn, 8 NMAC 3.FSP.404, 05/15/2001; A, 02/14/2002]

8.139.400.13 SPECIAL HOUSEHOLDS

A. Institutions: An individual [with] shall be considered a resident

of an institution if the institution provides two or more meals daily, and the institution has not been authorized to accept food stamp benefits.

B. Eligibility: Residents of institutions ~~will~~ shall not be eligible to participate in the Food Stamp Program, with the following exceptions:

(1) Federally Subsidized Housing: Residents of federally subsidized housing for the elderly, built under Section 202 of the Housing Act of 1959 (even if residents are not elderly), provided that they otherwise qualify for participation.

(2) Drug/Alcoholic Treatment Centers: Drug addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, live in a public or private non-profit facility or treatment center.

(3) Disabled/Blind Group Living Arrangement: Disabled or blind individuals as defined in (i) through (x) of Subparagraph b of Paragraph ~~22~~ 23 of Subsection A of 8.139.~~650~~ 100.7 NMAC who are residents in a group living arrangement.

(4) Battered Women/Children: Women, or women with their children, temporarily residing in a shelter for battered women and children. Such persons temporarily residing in shelters for battered women and children ~~will~~ shall be considered individual households for the purposes of applying for and participating in the Food Stamp Program.

(5) Homeless: Residents of public or private nonprofit shelters for the homeless.

C. Residents of Drug/Alcohol Treatment Centers: A drug addict or alcoholic who regularly participates in a drug or alcoholic treatment or rehabilitation program as a resident of the center may voluntarily apply for food stamp benefits. Children living with their eligible parent(s) in a drug or alcohol treatment center ~~will~~ shall be considered household members when determining eligibility and benefit amount. An ~~ISS will~~ caseworker shall certify residents of addict/alcoholic treatment centers, and their children, by using the same provisions applied to all other applicant households, except that certification must be accomplished through an authorized representative employed by the institution. (For further information, Subsection ~~B~~ D of 8.139.110.9 NMAC)

(1) Processing:

(a) Expedited Services: Residents of treatment centers or rehabilitation centers for drug addiction or alcohol treatment, and their children, may qualify for expedited service in the same way as any other household. Food stamp benefits ~~must~~ shall be received no later than the

seventh calendar day following the date of application, and verification may be postponed. Verification requirements ~~must~~ shall be completed before the second month's benefits are issued. (See 8.139.110.16 NMAC for more information on expedited service and continuation of benefits).

(b) Normal Processing: If normal processing standards apply, the ~~ISS will~~ caseworker shall complete the verification and documentation requirements before making an eligibility determination for the initial application (see 8.139.110.12 NMAC and 8.139.110.13 NMAC).

(c) Changes and Recertifications: Changes and recertifications ~~will~~ shall be processed for resident households using the same standards ~~[applied to all other food stamp households.]~~ outlined at 8.139.120.10 NMAC. Households ~~will~~ shall be extended the same rights to notices of adverse actions, to fair hearings, and to entitlement to lost benefits as are all other food stamp households (see 8.139.120.8 NMAC and 8.139.120.~~9~~ 10 NMAC).

(2) Treatment Centers Eligibility Status:

(a) Food and Nutrition Service Authorization: Before certifying any resident for food stamp benefits, an ~~ISS will~~ caseworker shall verify that the treatment center is authorized by FNS as a retailer if the center wishes to accept food stamp benefits. If the center is not authorized by FNS, the treatment center's status under Part B of Title XIX of the Public Health Service Act (42 USC, 300 et seq.) ~~must~~ shall be verified.

(b) List of Residents: Each treatment and rehabilitation center ~~will~~ must provide the appropriate county office a list of currently participating residents. The list ~~will~~ must include a statement signed by a responsible center official attesting to the list's validity. The list is required on a monthly basis.

(c) On-Site Visits: The County Director or designee ~~will~~ shall conduct periodic, random, on-site visits to the center to ensure the accuracy of the list and that the appropriate county office records are consistent and up-to-date.

(d) Change Notification: The treatment center ~~will~~ must notify the ~~ISS~~ caseworker of changes in a household's income or other circumstances and when an addict or alcoholic leaves the treatment center. The treatment center ~~will~~ must return the household's food stamp benefits to the county office if the household has left the center without its share.

(3) When Household Leaves Center: When a household leaves the center, the center ~~will~~ must give the resident

household its ID card and any unused food stamp benefits. The household, not the center, ~~will~~ shall be allowed to participate during any months remaining in the certification period.

(a) A household ~~will~~ shall receive the full food stamp benefit amount if no benefits were spent on its behalf. This is applicable at any time during the month.

(b) If food stamp benefits have already been issued and any amount has been spent on behalf of a household, and the household leaves the program before the 16th day of the month, the treatment center must return to the household one-half of the monthly food stamp benefit amount. If a household leaves after the 16th of the month, and the food stamp benefits have already been issued and used, no food stamp benefits ~~will~~ shall be returned to the household.

(c) The treatment center ~~will~~ must, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the center, and ~~will~~ must advise the household to return the form to the appropriate county office within ten days.

(d) When the household leaves the treatment center, the center is no longer allowed to act as the household's authorized representative.

(4) Organization/Institution Responsibilities:

(a) The organization or institution is responsible for:

(i) Program Rules: An organization or institution is legally responsible for any misrepresentation or intentional program violation which it knowingly commits in the certification of center residents.

(ii) Awareness of Household Circumstances: As an authorized representative, the organization or institution must be aware of the household's circumstances and should carefully review those circumstances with any resident before applying on ~~his/her~~ their own behalf.

(iii) Proper Use of Food Stamp Benefits: The organization or institution ~~will~~ shall be strictly liable for any loss or misuse of food stamp benefits held on behalf of resident households, and for all overissuances that occur while the households are residents of the treatment center. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that food stamp benefits were misappropriated or used for purchases that did not contribute to a certified household's meals.

(b) The county office ~~will~~ shall notify the Food Assistance Bureau when it

has reason to believe that an organization or institution is misusing food stamp benefits in its possession. The Food Assistance Bureau ~~[will]~~ shall notify FNS. HSD ~~[will]~~ shall take no action before FNS action against the organization or institution.

(c) HSD ~~[will]~~ shall establish a claim for overissuance of food stamp benefits held on behalf of resident clients if any overissuance is discovered during an investigation or hearing procedure for redemption violations.

(d) If FNS disqualifies an organization or institution for any period of time, HSD ~~[will]~~ shall suspend its authorized representative status for the same period.

D. Residents in Group Living Arrangements: ~~A disabled or blind [individuals who are] resident[s] of a public or private non-profit group living arrangement may choose to apply [on their own] for food stamp benefits on his own, or through an authorized representative of the resident's own choosing, or through the facility's authorized representative. The group living arrangement facility must determine if the resident may apply on the resident's own behalf based on the resident's physical and mental ability to handle his own affairs. If [such residents apply] a resident applies through the facility's authorized representative, [their] eligibility [will] shall be determined as a one-person household[s]. If a household applies on its own behalf, the household size [will] shall be determined according to the [definition in] rules at Subsection C of 8.139.400.8 NMAC. Such residents [will] shall be certified using the same provisions applied to all other households. [Before any of its residents are certified for food stamp benefits, the facility must provide verification that it is authorized by FNS or licensed by the New Mexico Health and Environment Department and that it is a nonprofit organization, as established by its articles of incorporation filed with the State Corporation Commission]. HSD shall determine that the group living arrangement facility is a non-profit organization as established by its articles of incorporation with the New Mexico Public Regulation Commission, and the group living arrangement facility must provide verification that it is authorized by FNS or certified by the New Mexico Department of Health as a group living arrangement, before any of the residents are certified for food stamps.~~

(1) Resident's Rights/Responsibilities:

(a) The rights and responsibilities listed in Paragraph 1 of Subsection C of 8.139.400.13 NMAC, for residents of treatment centers also apply to blind or disabled residents of group living arrangements when the facility acts as the resident's

authorized representative.

(b) If a household has made application on its own behalf, the household is responsible for reporting changes to the county office within 10 days of the date the change becomes known to the household.

(c) If a resident, or a group of residents, receives food stamp benefits on ~~[his/her] the resident's or group's own behalf and retain use of [his/her] the resident's or group's food stamp benefits, the [individuals are] resident or group is entitled to keep the food stamp benefits when [they] the resident or group leaves. If a group of residents has received food stamp benefits as one household, a pro rata share of the remaining food stamp benefits [will] shall be provided to any departing member.~~

(d) Residents of group living arrangements receiving food stamp benefits on their own behalf are responsible for overissuances, as would any other household (see (d) of Paragraph 2 of Subsection C of 8.139.400.13 NMAC).

(2) Group Home Responsibilities:

(a) The same responsibilities apply to authorized representatives of a group living arrangement as to treatment centers (Paragraph 4 of Subsection C of 8.139.400.13 NMAC). These provisions are not applicable if a resident has applied on ~~[his/her] the resident's own behalf. (For further information see Subsection B of 8.139.110.9 NMAC, Authorized Representatives).~~

(b) A group living facility ~~[will] shall give the appropriate county office a list of currently participating residents. This list [must] shall include a statement by a responsible center official attesting to the validity of the list. The list is required on a monthly basis.~~

(c) The County Director or designee ~~[will] shall conduct periodic, random on-site visits to ensure the accuracy of the list and make sure that the appropriate county office records are consistent and up-to-date.~~

(d) If a group living facility acts in the capacity of authorized representative, it must notify the ~~[ISS] caseworker~~ of changes in a household's income or other household circumstances, and when an individual leaves the group living arrangement.

(e) When a household leaves a group living facility, the facility, if it either acted as authorized representative or retained use of food stamp benefits on behalf of residents, gives the departing household its ID card and any unused benefits. The household, not the group living facility, ~~[will] shall be allowed to sign for and receive any remaining food stamp benefits.~~

(f) A departing household must

receive the full food stamp benefit amount, if issued, and if no food stamp benefits have been spent on behalf of that household. These procedures are applicable at any time during the month.

(g) If the food stamp benefits have been issued and any portion spent on behalf of the household, and the household leaves the group living arrangement before the 16th day of the month, the group living facility must return the ID card and one-half of the monthly food stamp benefit amount to the departing household. If the household leaves on or after the 16th of the month and the food stamp benefits have already been issued and used, the household ~~[will] shall not receive any food stamp benefits.~~

(h) If a group of residents is certified as one household and gives the food stamp benefits to the group living facility to use, departing residents must be given a pro rata share of one-half of the household's monthly food stamp benefit amount if the group leaves prior to the 16th day of the month. When a household leaves, the group living facility may no longer act as the household's authorized representative.

(i) The group living facility ~~[will] shall, if possible, give the household a change report form to report the household's new address and other circumstances after leaving the facility, and [will] shall instruct the household to return the form to the appropriate county office within ten days.~~

(3) Use Of Benefits:

(a) A group living facility may purchase and prepare food for eligible residents on a group basis if residents normally get their meals at a central location as part of the group living arrangement services, or if meals are prepared at a central location for delivery to the individual residents.

(b) If residents purchase and/or prepare food for home consumption, as opposed to communal dining, the group living facility must make sure that each resident's food stamps are used for meals intended for that resident.

(c) If residents retain use of their own food stamp benefits, they may either use the food stamp benefits to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

E. Battered Women's Shelters

(1) Before certifying residents of a battered women's shelter, an ~~[ISS must] caseworker shall make sure that the shelter is a public or private nonprofit residential facility serving battered women and their children.~~

(2) If a facility serves other individuals as well as battered women and their children, an ~~[ISS must] caseworker shall~~

make sure that a part of the facility is set aside on a long term basis to serve only battered women and their children.

(3) Shelters with FNS authorization to redeem food stamps at wholesalers ~~will~~ shall be considered to be meeting the definition and the ~~ISS~~ caseworker is not required to make any further determination. The ~~ISS must~~ caseworker shall document the basis of this determination.

(4) Local ISD offices are required to maintain and update a current list of shelters meeting the battered women's shelter definition to facilitate prompt certification of eligible residents.

(5) Special Certification Procedures:

(a) Many shelter residents have recently left a household containing the person who abused them. The former household may be certified for participation in the Food Stamp Program, and its certification may be based on a household size that includes the woman and children who have just left. Shelter residents included in such a certified household may nevertheless apply for and (if otherwise eligible) participate in the Program as a separate household, and concurrently, if the household that included them is the household containing the person who abused them. Shelter residents included in such a household may receive additional food stamp benefits as a separate household only once in a month.

(b) Shelter residents who apply as separate households ~~will~~ shall be certified solely on the basis of their own income and resources and the expenses for which they are responsible. They ~~will~~ shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources ~~will~~ shall be considered inaccessible.

(c) Room payments from the residents to the shelter ~~will~~ shall be counted as shelter expenses. Any shelter residents eligible for expedited service ~~will~~ shall be handled in accordance with the provisions in 8.139.110.16 NMAC.

(6) **Handling the Former Household:** The ~~ISS must~~ caseworker shall take prompt action to make sure that the former household's eligibility or food stamp benefit amount reflects the change in household size and composition. ~~Such action includes either:~~

~~(a) shortening the certification period by issuing a notice of expiration to the former household; or~~

~~(b) acting on the reported change by issuing an adverse action notice.]~~

[02/01/95, 07/01/98; 8.139.400.13 NMAC - Rn, 8 NMAC 3.FSP.406, 05/15/2001; A, 02/14/2002]

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

This is an amendment to 8.139.410 NMAC, Sections 8 and 9. This amendment clarifies the requirement to provide a Social Security Number and provisions in determining qualified alien status.

8.139.410.8 ENUMERATION (SOCIAL SECURITY NUMBER):

A. Requirement: ~~The~~ Social Security number is required for every individual who receives food stamp benefits. Providing the Social Security Number of a household member is voluntary. However, failure to provide the Social Security number shall result in the denial of food stamp benefits to the household member.

~~A. (1) [All households]~~ A household participating in the Food Stamp Program (FSP) must provide the Social Security number of each household member before certification. An actual Social Security card is not mandatory to fulfill the verification requirement.

~~B. (2)~~ If an individual has more than one number, all numbers must be provided.

~~C. (3)~~ If an individual does not have a Social Security number, or if the household does not know if an individual member has a Social Security Number, the household must apply for a Social Security number for the individual(s) before certification.

~~D. (4) [An Income Support Specialist (ISS) will]~~ A caseworker shall inform the household where to apply and what information is needed, and ~~will~~ shall advise the household that proof of application from the Social Security Administration (SSA) office for a Social Security number is required before certification.

~~E. (5)~~ The ~~ISS will~~ caseworker shall explain to applicants and participants that refusal or failure to comply, without good cause, ~~will~~ shall result in disqualification of the individual household member for whom a Social Security number has not been provided or obtained.

(6) For a newborn, the household must provide an Social Security number or proof of application for a Social Security number at the next recertification or within six months, whichever is later.

F. B. Validation of Social Security Number:

(1) The ~~ISS will~~ caseworker shall record, in the case file and the computer file, the Social Security number of each household member at certification,

recertification, or at any contact with the household. The Social Security number is validated by the SSA on a periodic basis.

(2) Immediate validation of an individual's Social Security number is not required for participation in the FSP. Household certification or issuance of food stamp benefits ~~will~~ shall not be delayed solely to validate the Social Security number of a household member.

(3) When a Social Security number has been validated by the SSA, the ~~ISS will~~ caseworker shall make a permanent annotation on the client case file to prevent validation of the Social Security number in the future.

(4) The ~~ISS must~~ caseworker shall offer to:

(a) Complete, or help the applicant complete, an application for a Social Security Number, form SS-5.

(b) Verify identity, age, and citizenship or alien status, as required by SSA;

(c) Forward the SS-5 application to the SSA.

~~G. C.~~ **Disqualification from Food Stamps:** ~~If an ISS a caseworker~~ determines that the household has refused or failed to provide or apply for a Social Security number without good cause, the individual who does not have a Social Security number ~~will~~ shall be ineligible to participate in the FSP.

(1) **Refusal to Comply:** Refusal to provide or apply for a Social Security number ~~will~~ shall result in the disqualification of the individual for whom a Social Security Number is required. Any remaining household members are eligible to participate in the FSP.

(2) **Failure to Comply:** Individuals who fail, without good cause, to meet the enumeration requirement within the required time period are ineligible. The disqualification applies to an individual(s), not to an entire household. An individual becomes eligible to participate, and the disqualification ends, when the Social Security number is provided.

(3) **Determining Good Cause:** If a household can show good cause why an application has not been completed in a timely manner, the household member without a Social Security number ~~will~~ shall be allowed to participate for one month in addition to the application month. To determine good cause, information from the household member, the Social Security Administration, and HSD records ~~must~~ shall be considered. Documentary evidence or collateral information (8.139.~~650~~ 100.7 NMAC Definitions) that the member has applied for a Social Security number or has made every effort to provide the Social Security Administration with the information needed to complete an application is

considered good cause for not complying timely with this requirement. If a household member applying for a Social Security number is unable to obtain the documents required by the Social Security Administration, the ~~[ISS must]~~ caseworker shall make every effort to help the household get these documents.

(a) If a household can show good cause why an application for a Social Security number has not been made in a timely manner, the household member concerned ~~[will]~~ shall be allowed to continue to participate each month that good cause exists.

(b) Good cause does not include delays caused by illness, lack of transportation, or temporary absence, since the SSA provides for the application process to be conducted entirely by mail. A personal interview is not required except for persons age 18 or over who must apply for an original Social Security Number at a local SSA office.

(4) Participation Pending Notification: When an application for a Social Security Number has been filed, as verified by a receipt of application for a Social Security Number from the Social Security Administration (SSA), an individual ~~[will]~~ shall be permitted to participate in the Food Stamp Program, pending notification by the SSA of the household member's Social Security number.

(5) Subsequent Actions: If the Social Security number is not verified at recertification for a number already provided, or has not been computer-verified in the interim, the ~~[ISS must]~~ caseworker shall disqualify the individual for noncompliance with the enumeration requirement. The ~~[ISS must]~~ caseworker shall have offered to help the individual complete an application for a duplicate Social Security number. Any household member disqualified for noncompliance with the enumeration requirement becomes eligible upon providing verification of a valid Social Security number.

[H.]D. Resources and Income: The resources of a disqualified individual count in their entirety. A pro rata share of the disqualified individual's income ~~[will]~~ shall be considered available to the remaining household members.

[H.]E. Use of Social Security Number: HSD is authorized to use Social Security Numbers in the administration of the Food Stamp Program. To the extent determined necessary, HSD may access computer information regarding individual applicants and participants who receive benefits or services under Title XVI of the Social Security Act. The Social Security Number ~~[will]~~ shall be used to prevent duplicate participation, to facilitate mass changes in federal benefits, and to request

and exchange information on individuals through the IEVS and SAVE computer match programs, and the Department of Labor.

[02/01/95, 07/01/98; 8.139.410.8 NMAC - Rn, 8 NMAC 3.FSP.411, 05/15/2001; A, 02/14/2002]

8.139.410.9 CITIZENSHIP

A. U.S. Citizens: Participation in the Food Stamp Program is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible alien status. Individuals on probation or parole from prison are included. Such individuals may have forfeited citizenship rights, such as the right to vote or run for office, but have not forfeited their citizenship. A birth outside the United States does not preclude U.S. citizenship, especially if both parents are U.S. citizens, but further verification is warranted.

B. Aliens: Qualified aliens, other than those described in this section, are not eligible to participate in the Food Stamp Program.

(1) Time Limited Eligibility: The following aliens are eligible for seven years after admission or status is granted into the United States:

(a) The date of entry of an alien as a refugee under Section 207 of the Immigration and Nationality Act;

(b) The date an alien is granted asylum under section 208 of the INA;

(c) The date an alien's deportation is withheld under section 243(h) of the Immigration and Nationality Act;

(d) The date an alien is granted status as a Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

(e) The date an alien is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as amended.

(2) Aliens With No Time Limit:

(a) An alien who is lawfully admitted to the United States for permanent residence (LPR) under the Immigration and Nationality Act, and has worked for 40 qualifying quarters of coverage as defined under Title II of the Social Security Act, or can be credited with such qualifying quarters. The definition of lawfully admitted for permanent residence under the Immigration and Nationality Act will be based on standards issued by the U.S. Immigration and Naturalization Service.

(b) An alien who is lawfully residing in the state and who is:

(i) a veteran with an honorable discharge and not on account of alien status, who has fulfilled minimum

active-duty service requirements;

(ii) on active duty, other than active duty for training, in the Armed Forces of the United States; or

(iii) the spouse, unmarried surviving spouse, or unmarried dependent child (under the age of 18), of a veteran or active-duty alien.

(c) An alien who receives benefits or assistance for blindness or disability as defined in Paragraph 22 of Subsection A of 8.139.650.7 NMAC, Definitions, and who was lawfully residing in the United States on August 22, 1996;

(d) An alien who was lawfully residing in the United States and was 65 years of age or older on August 22, 1996;

(e) A alien who was lawfully residing in the United States on August 22, 1996 and is under 18 years of age;

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply;

(g) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act;

(h) An alien lawfully residing in the United States, the spouse or unmarried dependent child (under age 18) of the alien, or the unmarried surviving spouse of an alien, who was a member of a Hmong or Highland Laotian tribe at the time the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in section 101 of title 38, U.S.C.).

(3) Quarters of Coverage: SSA reports quarters of coverage through the Quarters of Coverage History System (QCHS).

(a) Counting Quarters. For purposes of determining the number of quarters of coverage under Title II of the Social Security Act (SSA), and eligibility under (a) of Paragraph 2 of Subsection B of 8.139.410.9 NMAC, an alien will be credited with all of the quarters that were worked by himself/herself, as well as all of the qualifying quarters of coverage worked by the parent of such alien while the alien was under 18; and all of the quarters worked by a spouse during the marriage, provided the alien remains married to the spouse or the spouse is deceased.

(b) Disputing quarters. If an applicant disputes the SSA determination of quarters of coverage reported by QCHS, the individual may participate for up to six (6) months pending the results of an SSA investigation. The individual must have requested an investigation from SSA in order to participate. The household is responsible for repayment of any food stamp benefits issued for such individual while the investi-

gation was in progress, if SSA determines that the individual cannot be credited with 40 quarters of coverage under Title II of the Social Security Act.

(4) Federal Means Tested Benefit: Beginning January 1, 1997, a quarter cannot be counted as a qualifying quarter if an alien, the parent of an alien, or the spouse of an alien, received a federal means tested benefit.

(a) Federal means tested benefits include, but may not be limited to, benefits from:

(i) the Food Stamp Program;

(ii) the food assistance block grant programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(iii) Supplemental Security Income (SSI);

(iv) TANF block grant under Title IV of the Social Security Act.

(b) For purposes of determining whether an alien has or has not received a federal means tested benefit during a quarter, the definition of federal means tested benefit will not include:

(i) Medical Assistance under Title XIX of the Social Security Act (Medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for Medical Assistance under the state plan;

(ii) Short term, non-cash, in-kind emergency disaster relief;

(iii) Assistance or benefits under the National School Lunch Act;

(iv) Assistance or benefits under the Child Nutrition Act of 1966;

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

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

(vii) Programs, services, or assistance, delivering in-kind services at the community level and necessary for the protection of life or safety, that do not condition the provision of assistance, the amount of assistance provided, or the cost

of assistance provided, on the individual recipient's income or resources;

(viii) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act;

(ix) Means tested programs under the Elementary and Secondary Education Act of 1965;

(x) Benefits under the Head Start Act;

(xi) Benefits under the Job Training Partnership Act;

C. Verification of Citizenship/Eligible Alien Status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to the ISS.

(1) U.S. Citizenship: Any member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable will have all his/her resources and a pro-rata share of income considered available to any remaining household members.

(2) Eligible Alien Status: Verification of eligible alien status is mandatory at initial certification. Only those household members identified as aliens with legal alien status are eligible to participate in the FSP.

(3) Ineligible or Questionable Alien Status: Any household member identified as an ineligible alien, or whose alien status is in question, is not allowed to participate in the FSP. The ISS is responsible for offering to contact the Immigration and Naturalization Service if the alien has a document that does not clearly indicate eligible or ineligible alien status. Among those ineligible for participation are alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.

D. Need for Documentation:

(1) Household members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) An ISS will allow aliens a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time will be 10 days after the date the ISS requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an individ-

ual's eligible status is not provided by the deadline, the eligibility of the remaining household members will be determined. Verification of eligible alien status provided at a later date will be treated as a reported change in household membership.

(4) If an ISS accepts a non-INS document and determines that it is reasonable evidence of eligible alien status, the document will be copied and sent to INS for verification. The ISS will not delay, deny, reduce, or terminate the individual's participation pending verification from INS.

(5) Inability to Obtain INS Documentation: If a household indicates an inability to provide documentation of alien status for any member of the household, that member will be considered an ineligible alien. The ISS will not offer to contact INS when the alien does not provide any documentation from INS.

E. Failure to Cooperate: If a household, or a household member, indicates an unwillingness to provide documentation of alien status for any member, that member will be considered an ineligible alien. The ISS will not continue efforts to get documentation.

F. Reporting Illegal Aliens:

(1) An ISS must immediately inform the Food Assistance Bureau whenever the ISS determines that any member of a household is ineligible to receive food stamp benefits because the member is present in the United States in violation of the Immigration and Nationality Act.

(2) If an individual admits to an ISS that he/she is in the country illegally, or if obviously forged documents are presented, the ISS must report the person to the Food Assistance Bureau for referral to INS.

(3) Mere suspicion that an individual is an illegal alien, or the fact that an individual cannot or will not provide documentation, is not sufficient grounds to report him or her.

(4) If a household withdraws its application, the report should still be submitted if an interview has progressed to the point where enough information has been obtained to justify reporting an individual to INS.

(5) Illegal alien status is considered reported when the ISS enters the information on the household's computer file.

G. Income and Resources of Ineligible Aliens: All the income and resources of an ineligible alien, or of an alien whose alien status is unverified, will be considered in determining eligibility and food stamp benefit amount for the remaining eligible household members.]

ALIEN STATUS: Participation in the Food Stamp Program is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible alien status. Among those ineligible for participation are alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.

A. Eligibility: No individual is eligible to participate in the Food Stamp Program unless that individual is:

(1) a U.S. Citizen:

(2) a U.S. Non-Citizen National

(3) an American Indian who is:

(a) an American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(b) a member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) Hmong or Highland Laotian:

(a) A member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975 who is lawfully residing in the U.S.;

(b) The spouse, or surviving spouse of such Hmong or Highland Laotian, or

(c) An unmarried or surviving dependent child who is under the age of 18 or if a full-time student under the age of 22; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday of such Hmong or Highland Laotian.

(5) Qualified and Eligible Alien: An individual who is both a "qualified alien" and an "eligible alien" as defined in Subsection B of 8.139.410.9 NMAC.

B. Qualified and Eligible Aliens: An alien may qualify for participation in the Food Stamp Program if the alien meets at least one definition of "qualified alien" from Paragraph (1) below and one definition of "eligible alien" as defined in Paragraph (2) below.

(1) Qualified Alien: A "Qualified Alien" means:

(a) An alien who is lawfully admitted for permanent residence under the INA;

(b) An alien who is granted asylum under section 208 of the INA;

(c) A refugee who is admitted to the United States under section 207 of the INA;

(d) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(e) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(f) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(g) an alien, an alien child's parents or an alien child who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse;

(h) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(2) Eligible Alien: A qualified alien, as defined in Paragraph (1) of this SubSection, must have a status of at least one of the following to be eligible to receive food stamps:

(a) An alien who is lawfully admitted to the United States for permanent residence (LPR) under the Immigration and Nationality Act, and has worked for 40 qualifying quarters of coverage as defined under Title II of the Social Security Act, or can be credited with such qualifying quarters. The definition of lawfully admitted for permanent residence under the Immigration and Nationality Act shall be based on standards issued by the U.S. Immigration and Naturalization Service.

(b) An alien admitted as a refugee under section 207 of the INA. Eligibility is limited to 7 years from the date of the alien's entry into the U.S.

(c) An alien granted asylum under section 208 of the INA. Eligibility is limited to 7 years from the date asylum was granted.

(d) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA. Eligibility is limited to 7 years from the date deportation or removal was withheld.

(e) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980). Eligibility is limited to 7 years from the date the status as a Cuban or Haitian entrant was granted.

(f) An Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461.

Eligibility is limited to 7 years from the date admitted as an Amerasian.

(g) An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements including an individual who died in active military, naval or air service.

(ii) An individual on active duty in the Armed Forces of the U.S. (other than for training).

(iii) The spouse or surviving spouse of a veteran or active duty military alien described above provided the spouse has not remarried.

(iv) A child or surviving child of a deceased veteran (provided such child was dependent upon the veteran at the time of the veteran's death) who is under the age of 18 (if a full-time student, under the age of 22); or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

(h) An individual who on August 22, 1996, was lawfully residing in the U.S., and is now receiving benefits or assistance for blindness or disability as defined in Paragraph (23) of Subsection A of 8.139.100.7 NMAC.

(i) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(j) An individual who on August 22, 1996, was lawfully residing in the U.S. and is now under 18 years of age.

(3) Quarters of Coverage:

(a) SSA reports quarters of coverage through the Quarters of Coverage History System (QCHS).

(b) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(i) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility.

(ii) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the case-

worker shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(c) Disputing quarters: If an applicant disputes the SSA determination of quarters of coverage reported by OCHS, the individual may participate for up to six (6) months pending the results of an SSA investigation. The individual or HSD must have requested an investigation from SSA in order to participate. The household is responsible for repayment of any food stamp benefits issued for such individual during the investigation if SSA determines that the individual cannot be credited with 40 quarters of coverage under Title II of the Social Security Act.

(4) Federal Means-Tested Benefit: After December 31, 1996, a quarter in which an alien received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. If the alien earns the 40th quarter of coverage prior to applying for food stamps or any other Federal means-tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

(a) Federal means-tested benefits include, but may not be limited to, benefits from:

(i) the Food Stamp Program;

(ii) the food assistance block grant programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(iii) Supplemental Security Income (SSI);

(iv) TANF block grant under Title IV of the Social Security Act.

(b) For purposes of determining whether an alien has or has not received a federal means-tested benefit during a quarter, the definition of federal means-tested benefit shall not include:

(i) Medical Assistance under Title XIX of the Social Security Act (Medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for Medical Assistance under the state plan;

(ii) Short-term, non-cash, in-kind emergency disaster relief;

(iii) Assistance or benefits under the National School Lunch Act;

(iv) Assistance or benefits under the Child Nutrition Act of 1966;

(v) Public health assis-

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

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

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

(viii) Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act;

(ix) Means-tested programs under the Elementary and Secondary Education Act of 1965;

(x) Benefits under the Head Start Act;

(xi) Benefits under the Workforce Investment Act.

C. Verification of Citizenship/Eligible Alien Status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) U.S. Citizenship: Any member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining household members.

(2) Eligible Alien Status: Verification of eligible alien status is mandatory at initial certification. Only those household members identified as aliens with qualified and eligible alien status are eligible to participate in the FSP.

(3) Ineligible or Questionable Alien Status: Any household member identified as an ineligible alien, or whose alien status is in question cannot participate in the FSP. The caseworker is responsible for offering to contact the Immigration and Naturalization Service if the alien has a doc-

ument that does not clearly indicate eligible or ineligible alien status.

D. Need for Documentation:

(1) Household members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) A caseworker shall allow aliens a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an individual's eligible status is not provided by the deadline, the eligibility of the remaining household members shall be determined. Verification of eligible alien status provided at a later date shall be treated as a reported change in household membership.

(4) If a caseworker accepts a non-INS document and determines that it is reasonable evidence of eligible alien status, the document shall be copied and sent to INS for verification. The caseworker shall not delay, deny, reduce, or terminate the individual's participation pending verification from INS.

(5) Inability to Obtain INS Documentation: If a household indicates an inability to provide documentation of alien status for any member of the household, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.

E. Failure to Cooperate: If a household, or a household member, indicates an unwillingness to provide documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation.

F. Reporting Illegal Aliens:

(1) HSD shall inform the local INS office immediately whenever a caseworker determines that any member of a household is present in the US in violation of the INA.

(2) Illegal alien status is considered reported when the caseworker enters the information on the household's computer file.

G. Income and Resources of Ineligible Aliens: All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and food stamp benefit amount for the remaining eligible house-

hold members.

[02/01/95, 07/01/98, 02/01/99; 8.139.410.9 NMAC - Rn, NMAC 3.FSP.412, 05/15/2001; A, 02/14/2002]

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

This is an amendment to 8.139.420 NMAC, Sections 8 and 9. Section 8 clarifies categorical eligibility and Section 9 sets forth rules for sponsored aliens.

8.139.420.8 CATEGORICAL ELIGIBILITY (CE)

A. Household Requirements:

(1) Categorically Eligible Households:

(a) Any household in which all members receive Title IV-A assistance (TANF), General Assistance (GA), or Supplemental Security Income (SSI) benefits is considered to be categorically eligible for food stamp benefits.

(b) The household is categorically eligible with respect to: resources, gross and net income limits, SSN enumeration, sponsored alien information, and residence.

(c) Categorically eligible households are subject to all other food stamp eligibility requirements, including, but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements.

(d) Categorically eligible households also include those who are:

(i) Approved for Title IV-a assistance, GA, or SSI benefits, but who have not yet received payment;

(ii) In zero payment status, because benefits are being recouped; or

(iii) Entitled to Title IV-A assistance benefits, but receive no payment, because the payment amount is less than \$10.

(2) Determining Categorical Eligibility: A household is considered categorically eligible if the household:

(a) Contains only members who are Title IV-A, GA, and/or SSI recipients; and

(b) Meets the household definition in Subsection C of 8.139.400.8 NMAC; and

(c) Includes all individuals who purchase and prepare food together in one food stamp household regardless of whether or not they are separate benefit groups for Title IV-A, GA, or SSI purposes; and

(d) Includes no disqualified [per-

sons as described below.] individuals.

(e) ~~[An Income Support Specialist (ISS) will]~~ A caseworker shall verify questionable information related to determining categorical eligibility.

(3) ~~[Non-Categorically Eligible Households:] Households Ineligible for Categorical Eligibility:~~

(a) **Institutionalized:** Under no circumstances is a household considered categorically eligible if the household is institutionalized. Residents of public institutions who apply jointly for SSI and food stamp benefits before release from an institution are not considered categorically eligible if there is a finding of potential SSI eligibility by the Social Security Administration prior to release. An individual becomes categorically eligible when the final determination is made for SSI eligibility and the individual has been released from the institution.

(b) **Disqualified:** A household ~~[will]~~ shall not be considered categorically eligible if:

(i) ~~[Any]~~ a member is disqualified for Intentional Program Violation (IPV); or

(ii) ~~[the individual]~~ a member is disqualified for failure to comply with work requirements. ~~[or]~~

(c) **Refusal to Cooperate:** A household ~~[will not be considered categorically eligible if the household]~~ that refuses to cooperate in providing information that is necessary to determine eligibility shall not be deemed to be categorically eligible.

(d) ~~[These]~~ Such households ~~[will]~~ shall be subject to all food stamp eligibility and benefit provisions, including treatment of income and resources for disqualified members, and cannot be reinstated in the Food Stamp Program (FSP) on the basis of the categorical eligibility provision.

(4) **Ineligible Household Members:** ~~[Ineligible for Categorical Eligibility: No person will be included as a member of any household which is otherwise]~~ A household shall not be categorically eligible if ~~[that person is:]~~ the household contains a member who is ineligible to participate in the Food Stamp Program because the member is:

(a) An ineligible alien;

(b) An ineligible student;

(c) Institutionalized;

(d) Ineligible because of failure to comply with work requirements;

(e) Disqualified for failure to provide or apply for a Social Security number; ~~[or]~~

~~[(f) A household member, not the head of household, who is disqualified for failure to comply with work requirements; or]~~

~~[(g)]~~ (f) An individual disqualified

for IPV[.] or

~~[(h)]~~ (g) An individual who receives SSI and who is ineligible because of a drug related felony conviction as set forth in Subsection C of 8.139.400.12 NMAC.

B. Continued Categorical Eligibility:

(1) Assumed to Continue: Categorical eligibility is assumed to continue when a household receiving Title IV-A or GA has not submitted an application for redetermination and the household's food stamp certification period will expire. If the household is later determined to be ineligible for Title IV-A or GA benefits, it may remain eligible for food stamp benefits as a non-~~[FA]~~ cash assistance household. For a change which becomes known to the ~~[ISS]~~ caseworker, the change reporting procedures in 8.139.120.9 NMAC are used to determine eligibility and food stamp benefit amount.

(2) When Income Exceeds Standards: Categorically eligible households are exempt from food stamp gross and net income limits, but ~~[must]~~ shall meet all other food stamp eligibility requirements for food stamp benefit determination. A one- or two-person categorically eligible household is entitled to the minimum food stamp benefit amount, except in an initial month if its prorated food stamp benefit amount is less than \$10. A categorically eligible household of three or more individuals remains an active case even if the household is entitled to no benefits because its net income exceeds the maximum at which food stamp benefits can be issued.

C. Categorical Eligibility at Application:

(1) Food Stamp Eligibility Requirements Prior to ~~[Financial]~~ Cash Assistance Determination: Households applying for Title IV-A, GA, or SSI assistance ~~[must]~~ shall be certified for food stamp benefits based on all food stamp eligibility requirements prior to approval for the ~~[Financial]~~ Cash Assistance ~~[(FA)]~~ program(s). The household ~~[will]~~ shall be notified that the food stamp benefit amount ~~[will]~~ shall be adjusted without further notice if the application for Title IV-A, GA, or SSI assistance is approved.

(2) Verification Factors:
(a) For households applying for both ~~[financial]~~ Cash Assistance and food stamp benefits, the ~~[ISS will]~~ caseworker shall verify all factors of eligibility which are needed only to determine the household's eligibility for food stamp benefits.

(b) For those factors needed to determine both ~~[financial]~~ Cash Assistance and food stamp eligibility, the ~~[ISS will]~~ caseworker shall use ~~[financial]~~ Cash Assistance verification rules.

(c) An [ISS with] caseworker shall not delay a household's food stamp benefits if at the end of 30 days following the date the application was filed, there is enough verification to approve the food stamp case, but not enough verification to meet the [financial] Cash Assistance verification rules.

(3) [FA] Cash Assistance Approval: When a [financial] Cash Assistance application is approved, the household [with] shall be considered categorically eligible, if the household meets all categorical eligibility requirements in 8.139.420.8 NMAC.

(4) [FA] Cash Assistance Payment: If [an ISS] a caseworker can anticipate the amount and date of receipt of an initial [FA] Cash Assistance payment, the payment [with] shall be used to determine the household's food stamp benefit amount if the [FA] Cash Assistance payment will be received in the month of application. If the payment will not be received until a later month, the [ISS with] caseworker shall adjust the household's food stamp benefit amount according to the anticipated receipt of the payment.

(5) If the amount or date of receipt of an initial [FA] Cash Assistance payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, receipt of the [FA] Cash Assistance payment [with] shall be handled as a change in circumstances. An adverse action notice [with] shall not be required if receipt of the [FA] Cash Assistance payment reduces, suspends, or terminates the household's food stamp benefits, provided that the household has been notified in advance that its benefits may be reduced, suspended or terminated when the payment is received.

D. Application Processing:

(1) FS Approval Postponed: Approval for food stamp benefits may be postponed within the 30-day processing time limit in order to determine if a household will be eligible for Title IV-A, GA, or SSI assistance, unless the household is entitled to expedited service. If the household is determined eligible for [financial] Cash Assistance benefits, the food stamp application will be approved at the same time.

(2) FS Denial: If a household does not meet food stamp eligibility requirements at the time of application, the [ISS] caseworker may postpone denying a potentially categorically eligible household. If the household is not determined categorically eligible, the food stamp application is denied at the time the [financial] Cash Assistance application is denied.

(3) Re-Registering Denied Applications: [An ISS must] A caseworker

shall re-register a denied food stamp application if the household is later determined eligible for Title IV-A, GA, or SSI benefits and the household is otherwise categorically eligible. When a denied food stamp application is re-registered, the [ISS with] caseworker shall use the original food stamp application. The food stamp benefit amount for the initial month is prorated from the date the [FA] Cash Assistance benefits are payable, or the date of the original food stamp application, whichever is later. A second interview or application from the household is not necessary.

(4) Updating Application: When [an ISS] a caseworker must update and reevaluate the original application of a denied case, the [ISS with] caseworker shall use any available information to update the application. The household [with] shall be contacted by phone or by mail to confirm and explain changes, and to determine if any other changes in household circumstances have occurred. In cases where the information received from the household differs from that obtained by the [ISS] caseworker, or the household provides additional changes in information, the household or the authorized representative must initial the changes and re-date and re-sign the original food stamp application.

(5) SSI Application Denials: Since the [ISS] caseworker does not have first-hand knowledge of the progress of an SSI application, and if the food stamp application was denied on the 30th day, the household [must] shall be advised to reapply for food stamp benefits when it is notified of SSI approval.

[02/01/95, 07/01/97, 06/01/99; 8.139.420.8 NMAC - Rn, 8 NMAC 3.FSP.426, 05/15/2001; A, 02/14/2002]

8.139.420.9 S P O N S O R E D ALIENS

A. Definition of a Sponsored Alien: An alien lawfully admitted for permanent resident status into the United States, for which an individual has executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act. Not all lawful aliens are sponsored. Only in the event that the sponsored alien is eligible in accordance with 8.139.410.9 NMAC shall HSD consider available to the household the income and resources of the sponsor and spouse.

B. Date of Entry or Date of Admission: The date established by the Immigration and Naturalization Service (INS) as the date the sponsored alien was admitted for permanent residence.

C. Sponsor: An individual who has executed an affidavit of support or similar agreement on behalf of an alien, as a condition of the alien's entry or admis-

sion into the United States as a permanent resident.

D. Exempt Aliens: The provisions of this section do not apply to the following:

(1) an alien participating in the Food Stamp Program as a member of the sponsor's food stamp household;

(2) an alien sponsored by an organization or group rather than an individual;

(3) an alien who is not required to have a sponsor under the Immigration and Nationality Act; or

(4) an alien that ISD has determined is indigent.

(a) For purposes of this paragraph, the term indigent means that the sum of the eligible sponsored alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130% of the poverty income guidelines for the household's size.

(b) The caseworker shall determine the amount of income and other assistance provided in the month of application.

(c) If the alien is indigent, the amount that HSD shall count shall be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewed for additional 12-month periods.

(5) A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after HSD determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, HSD shall not deem the batterer's income and resources if the battery is recognized by a court or the INS and has substantial connection to the need for benefits, and the alien does not live with the batterer.

E. Sponsored Aliens' Responsibility: HSD shall attribute the entire amount of income and resources to the applicant eligible sponsored alien until the alien provides the information specified below. The sponsored alien is responsible for:

(1) obtaining the cooperation of [his/her] the alien's sponsor(s) to provide the [ISS] caseworker, at the time of application or recertification, with the information or documentation necessary to determine the income and resources of a sponsor and a sponsor's spouse,

(2) providing the names and other identifying factors of other aliens for whom the alien's sponsor has signed an affidavit of support.

(3) reporting the require informa-

tion about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period.

(4) reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period.

F. Information

Required: The following information ~~must~~ shall be obtained from the alien at the time of initial application and at recertification:

(1) The full amount of the income and resources of an alien's sponsor.

(2) The full amount of the income and resources of a sponsor's spouse, if the spouse is living with the sponsor.

(3) Provision of the Immigration and Nationality Act under which the alien was admitted;

(4) Date of the alien's entry or admission as a lawful permanent resident as established by INS;

(5) The alien's date of birth, place of birth, and alien registration number;

(6) Number of dependents claimed or who could be claimed as dependents by the sponsor and the sponsor's spouse for federal income tax purposes.

(7) Name, address and phone number of the alien's sponsor.

(8) The above information ~~will~~ shall be verified at initial application and at recertification.

G. Deemed Income:

(1) The ~~gross amount~~ monthly income of the income of a sponsor and the sponsor's spouse (if living with the sponsor) ~~will~~ shall be considered the unearned income of the sponsored alien, until the alien achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the Social Security Administration. If the sponsored alien can demonstrate that the alien's sponsor is the sponsor of other aliens, HSD shall divide the income by the number of such sponsored aliens. The spouse's income ~~will~~ shall be counted even if the sponsor and spouse were married after the sponsoring agreement was signed. The monthly income attributed to the sponsored alien is the total gross earned and unearned income (less exclusions) of the sponsor and sponsor's spouse (if living with the sponsor) at the time the household containing the sponsored alien member applies or is recertified for participation in the FSP, reduced by:

(a) a 20% earned income amount for the portion of the income determined as earned income of the sponsor and the sponsor's spouse; and

(b) an amount equal to the FSP's monthly gross income eligibility limit for a household equal in size to the sponsor, the

sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(4)(2) TANF-Sponsored Alien

Income: If an alien has already reported gross income information about ~~his or her~~ the alien's sponsor according to TANF sponsored alien rules, that income amount ~~will~~ shall be used for food stamp deeming purposes.

(2)(3) Sponsor-Paid Money:

Actual money paid to the alien by the sponsor or the sponsor's spouse ~~will~~ shall not be counted as income to the alien unless the amount paid exceeds the amount deemed to the alien. The amount paid that actually exceeds the amount deemed ~~will~~ shall be counted as income to the alien, in addition to the deemed amount.

H. Deemed Resources:

(1) The full amount of the resources reduced by \$1500 of a sponsor and the sponsor's spouse (if living with the sponsor) ~~will~~ shall be deemed to be the resources of the sponsored alien until the alien achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the Social Security Administration. The spouse's resources ~~will~~ shall be counted even if the sponsor and spouse were married after the sponsoring agreement was signed. If the sponsored alien can demonstrate that the alien's sponsor is the sponsor of other aliens, HSD shall divide the resources by the number of such sponsored aliens. Resources available to the sponsor ~~will~~ shall be determined in accordance with the provisions found in 8.139.510 NMAC.

(2) TANF Sponsored Alien

Resources: If an alien has already reported all resource information on ~~his/her~~ the alien's sponsor according to TANF sponsored alien rules, that resource amount ~~will~~ shall be used for food stamp deeming purposes as the amount to be attributed to the alien.

I. Determining

Eligibility and Benefit Amount: The amount of income and resources deemed to be that of the sponsored alien is considered in determining the eligibility and benefit amount of the household of which the alien is a member.

J. Sponsors:

(1) **Sponsoring More than One Alien:** ~~The full amount of a sponsor's and his or her spouse's income will be attributed to the sponsored alien whether or not more than one alien is sponsored.~~ If the sponsored alien can demonstrate that the alien's sponsor is the sponsor of other aliens, HSD shall divide the income and resources by the number of such sponsored aliens

(2) Alien Switches Sponsors: If

the alien reports that ~~he/she~~ the alien has changed sponsors during the certification period, deemed income and resources ~~will~~ shall be recalculated based on information and verification about the new sponsor and the sponsor's spouse. The change ~~will~~ shall be handled in accordance with change-reporting requirements, time frames and procedures, as appropriate.

(3) **Loss of Sponsorship:** If an alien loses ~~his/her~~ their sponsor, and does not get another, the full amount of the income and resources of the previous sponsor continues to be attributed to the alien until the alien achieves US citizenship through naturalization or has worked 40 qualifying quarters of coverage as defined by the Social Security Administration. If the alien sponsor dies, the income and resources ~~will~~ shall no longer be attributed to the alien.

K. Awaiting Verification:

Until the alien provides information or verification necessary to determine eligibility, the sponsored alien is ineligible. The caseworker shall determine the eligibility of any remaining household members. The caseworker shall consider available to the remaining household members the income and resources of the ineligible alien in determining the eligibility and benefit level of the remaining household members. If the sponsored alien refuses to cooperate in providing information or verification, other adult members of the alien's household are responsible for providing the information or verification required. If the caseworker subsequently receives information or verification, the caseworker shall act on the information as a reported change in household membership in accordance to timeliness standards. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the household provides the needed sponsor information or verification. The caseworker shall assist alien in obtaining verification.

(K) L. Over-issuance:

An alien's sponsor and the alien ~~will~~ shall be jointly liable for repayment of any over-issuance of food stamp benefits resulting from incorrect information provided by the sponsor. The sponsor of an alien or the alien ~~will~~ shall also be independently responsible for the obligation to repay any over-issuance of food stamp benefits resulting from incorrect information provided by the sponsor.

(1) **Good Cause/Sponsor:** If an alien's sponsor has good cause or is without fault for supplying the incorrect information, the alien's household is solely liable for repayment of the over-issuance. ~~The [ISS must] caseworker shall~~ determine whether good cause exists in such situa-

tions, and ~~with~~ shall consider the facts and circumstances, including information submitted by the alien and by the sponsor. Good cause includes, but is not limited to, a misunderstanding by a sponsor of the responsibility to report information about ~~his/her~~ the sponsor's resources and income or a lack of information provided at the time a sponsor executed the affidavit of support or similar agreement on behalf of the alien. Problems caused by the inability of a sponsor or alien to speak, read, or write English may constitute good cause.

(2) Establishing the Claim: If a sponsor does not have good cause, the ~~ISS must~~ caseworker shall determine whether to establish a claim for the over-issuance against the sponsor or the alien's household, or both. HSD may choose to establish claims against both parties at the same time or to establish a claim against the party considered most likely to repay first. If a claim is established against the alien's sponsor first, the ~~ISS must~~ caseworker shall ensure that a claim is established against the alien's household if the sponsor fails to respond to a demand letter within 30 days of receipt. HSD ~~must~~ shall return to the alien's sponsor and/or the alien's household any amounts repaid in excess of the total amount of the claim.

(3) Claims Collection Against Sponsor:

(a) The Restitution Bureau initiates a collection action by sending an alien's sponsor a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the sponsor may pay the claim. The sponsor ~~with~~ shall be informed that ~~he/she will~~ they shall not be held responsible for repayment of the claim if the sponsor can demonstrate good cause or absence of personal fault for the incorrect information having been supplied to HSD. In addition, the Restitution Bureau ~~with~~ shall follow up the written demand letter with personal contact, if possible. HSD may pursue other collection actions as appropriate to obtain payment of a claim against any sponsor who fails to respond to a written demand letter. The Restitution Bureau ~~with~~ shall end a collection action against a sponsor at any time if it has documentation that the sponsor cannot be located, or if the cost of further collection efforts is likely to exceed the amount that can be recovered. If an alien's sponsor responds to a written demand letter and is financially able to pay the claim at one time, the Restitution Bureau ~~with~~ shall collect a lump sum cash payment. The Restitution Bureau ~~with~~ shall negotiate a payment schedule with the sponsor for repayment of the claim, as long as payments are made in regular installments. For more information on handling claims, see 8.139.640.11

NMAC.

(b) Exception: A sponsor who is participating in the Food Stamp Program as a household shall be excluded from any demand for repayment of the value of food stamp benefits issued to a sponsored alien.

(4) Fair Hearing: A sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault for giving incorrect information, or to contest the amount of the claim.

(5) Claims Collection Against Alien Households: Before initiating collection against a sponsored alien's household for repayment of an overissuance caused by incorrect information having been supplied concerning the sponsor or sponsor's spouse, ~~an ISS will~~ a caseworker shall determine whether the incorrect information supplied was due to an inadvertent household error or an intentional program violation (IPV) on the part of the alien. Claims collection against a household ~~with~~ shall be pursued regardless of the current eligibility status of sponsored alien or alien households.

(a) Intentional misrepresentation: If sufficient documentary evidence exists to substantiate that incorrect information was provided by an act of IPV on the part of the alien, the case ~~must~~ shall be referred as a request for IPV disqualification, in accordance with the procedures in 8.139.647.8 NMAC. A claim against an alien's household ~~with~~ shall be handled as an inadvertent error claim until there is a determination of an IPV by an administrative disqualification hearing official or a court of appropriate jurisdiction.

(b) Misunderstanding/unintended error. If it is determined that incorrect information was supplied because of a misunderstanding or unintended error on the part of the sponsored alien, the claim ~~with~~ shall be handled as an inadvertent household error claim.

[E] M. Memorandum of Agreement: An agreement has been entered into by the Secretary of the United States Department of Agriculture (USDA), the U.S. Secretary of State, and the U.S. Attorney General regarding sponsored aliens and their sponsors. A sponsor and alien, at the time the sponsor executes an affidavit of support or similar agreement on behalf of the alien, will be informed of the requirements of Sec. 1308 of P.L. 97-98. Under the agreement, the Bureau of Consular Affairs of the State Department and local INS offices provide information to HSD that is needed to carry out the provisions of the agreement. The agreement lists the specific information that must be released by all parties to facilitate identification of the alien and sponsor and enable HSD to verify required information sup-

plied by the alien which is essential for eligibility determinations.

[02/01/95, 07/01/98; 8.139.420.9 NMAC - Rn, 8 NMAC 3.FSP.428, 05/15/2001; A, 02/14/2002]

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

This is an amendment to 8.139.500 NMAC, Sections 10 and 12.

8.139.500.10 DETERMINING INCOME

A. Anticipating Income:

In determining a household's eligibility and food stamp benefit amount the ~~ISS will~~ caseworker shall use income already received by the household during the certification period and any income the household and the ~~ISS~~ caseworker are reasonably certain ~~with~~ shall be received during the remainder of the certification period.

(1) If the amount of income or date of receipt is uncertain, that portion of the household's income that is uncertain ~~with~~ shall not be counted.

(2) If the exact amount of the income is not known, that portion of the income which can be anticipated with reasonable certainty ~~with~~ shall be considered income.

(3) In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, a household may choose to average its income.

B. Income received during the last four (4) weeks ~~with~~ shall be used as an indicator of the income that is and ~~with~~ shall be available to the household during the certification period.

(1) Past income is not used as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated during the certification period.

(2) If income fluctuates to the extent that a single four-week period does not provide an accurate indication of anticipated income, a longer period of past time can be used if it gives a more accurate indication of anticipated fluctuations in income.

(3) Income already received is not used and verification is obtained from the income source, if the household and the ~~ISS~~ caseworker decide that income already received by the household is not indicative of income expected to be received in future months.

C. Quarterly Reporting:

A benefit group subject to Quarterly Reporting shall be subject to income methodology as specified in Subsection F of 8.139.120.9 NMAC.

[G.] D. Income anticipated during the certification period ~~[will]~~ shall be counted only in the month it is expected to be received, unless the income is averaged.

[D.] E. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income ~~[will]~~ shall be converted to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15. Use of the conversion factor ~~[will]~~ shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly pay check is received. Instead, the amount of the extra pay check is averaged over the certification period.

[E.] F. Held Wages:

(1) Wages withheld at the request of an employee ~~[will]~~ shall be considered income to a household in the month the wages would otherwise have been paid by the employer.

(2) Wages withheld by the employer as a general practice, even in violation of the law, ~~[will]~~ shall not be counted as income to a household, unless the household anticipates that it will ask for and receive an advance.

(3) If a household anticipates asking for and receiving income from wages that were previously withheld by the employer as a general practice, the income ~~[will]~~ shall be counted to determine eligibility.

[F.] G. Earned Income: Earned income is anticipated as follows:

(1) Income received in the four weeks before the date of interview ~~[will]~~ shall be used to anticipate income for the month of application. The same income is used for the remaining months of the certification period, provided that the applicant and the ~~[ISS]~~ caseworker are reasonably certain the income amounts are indicative of future income.

(2) If the applicant and the ~~[ISS]~~ caseworker determine that the income is not indicative of income anticipated to be received during the certification period, a longer period of past time ~~[will]~~ shall be used if it will provide a more accurate indicator of anticipated income.

[G.] H. Unearned Income:

(1) In order to anticipate unearned income, income from the four weeks prior to the date of interview ~~[will]~~ shall be used, provided the income is expected to continue.

(2) Households receiving state or federal assistance payments, such as Title IV-A, GA, SSI or Social Security payments on a recurring monthly basis are not considered to have varied monthly income from these sources simply because mailing cycles may cause two payments to be received in one month.

[H.] I. Income Received More Frequently Than Weekly: The amount of monthly gross income paid more frequently than weekly (i.e., daily) is determined by adding all the income received during the past four weeks. The gross income amount is used to anticipate income in the application month and the remainder of the certification period. Conversion factors ~~[will]~~ shall not be applied to this income.

[I.] J. Income Received Less Frequently Than Monthly: The amount of monthly gross income paid less frequently than monthly is determined by dividing the total income by the number of months it is intended to cover. The ~~[ISS-will]~~ caseworker shall carefully explain to the household how the monthly income was computed and what changes might result in a reportable change. Documentation ~~[must]~~ shall be filed in the case record to establish clearly how the anticipated income was computed.

[J.] K. Conversion Factors: Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income ~~[will]~~ shall be converted to monthly amount as follows:

(1) Income received on a weekly basis is multiplied by 4.3;

(2) Income received on a biweekly basis is multiplied by 2.15.

(3) Using the conversion factors accounts for those months in which an extra paycheck is received,

(4) Averaged income ~~[will]~~ shall be rounded to the nearest whole dollar prior to application of the conversion factor. Amounts resulting in \$.50 or more are rounded up. Amounts resulting in \$.40 or lower are rounded down.

[K.] L. Known Changes in Income for Future Months at Application:

(1) At application or recertification, it ~~[must]~~ shall be determined if any factors affecting income will change in future months. Such factors include a new income source, termination of income, or increases or decreases in income.

(2) Income is considered only when the amount of the income and the date it will be received are reasonably certain.

(3) In the event that a change is known for future months, benefits are computed by taking into account the change in income.

[L.] M. Averaging Income Over the Certification Period:

(1) All households may choose to have their income averaged. Income is usually not averaged for destitute households because averaging would result in assigning to the month of application income from future periods which is not available for its

current food needs.

(2) **To average income,** the ~~[ISS]~~ caseworker uses a household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.

(3) **Contract Income:** Households which, by contract, derive their annual income in a period of less than one year ~~[will]~~ shall have that income averaged over a twelve (12)-month period, provided that the income is not received on an hourly or piecework basis.

(a) Contract income includes income for school employees, farmers, self-employed households, and individuals who receive annual payments from the sale of real estate.

(b) These procedures do not include migrant or seasonal farm worker households.

(4) **Educational Monies:** Households receiving scholarships, deferred educational loans, or other educational grants ~~[must]~~ shall have such income, after exclusions, averaged over the period for which it is provided. All months which the income is intended to cover ~~[will]~~ shall be used to average income, even if the income is received during the certification period. If the period has elapsed completely, the educational monies ~~[will]~~ shall not be considered income.

[M.] N. Using Exact Income: Exact income, rather than averaged income, ~~[will]~~ shall be used if:

(1) The household has chosen not to average income;

(2) Income is from a source terminated in the application month;

(3) Employment has just begun in the application month and the income represents only a partial month;

(4) In the month of application, the household qualifies for expedited service or is considered a destitute, migrant or seasonal farm worker household; or

(5) Income is received more frequently than weekly, (i.e., daily).

[02/01/95, 11/01/95, 07/01/97, 06/01/99; 8.139.500.10 NMAC - Rn, 8 NMAC 3.FSP.502.7, 05/15/2001; A, 02/14/2002]

8.139.500.12 ESTABLISHING CERTIFICATION PERIODS

A. The ~~[ISS-must]~~ caseworker shall establish a definite period of time within which a household is eligible to receive benefits.

B. Entitlement to food stamp benefits ends at the expiration of the household's certification period. Continued eligibility is determined only when an application has been filed, an interview held, and

all verification provided.

C. Under no circumstances ~~will~~ shall benefits be continued beyond the end of a certification period without a redetermination of eligibility.

D. A household ~~will~~ shall be provided with an expiration notice before or at the beginning of the last month of a certification period.

E. If a household is determined eligible for the initial month but ineligible the following month, it ~~will~~ shall be certified for one month only. Conversely, a household may be ineligible for the month of application but eligible for the following month(s). If the household is denied for the month of application, it does not need to file a new application for the following month.

F. **Conformity With Calendar Month:** Certification periods ~~must~~ shall conform to calendar months. At the initial application, the first month in the certification period is the month of application, even if the household's eligibility is not determined until a later month.

G. **Length of Certification Period:** Households ~~will~~ shall be assigned the longest certification period possible based on the stability of the household's circumstances. A certification period cannot exceed 12 months, except for households in which all adult members in the household are elderly or disabled. At least one contact with each certified household ~~must~~ shall be made every 12 months.

(1) **Three Months or Less:** A certification period of three months or less may be assigned if there is a substantial likelihood of frequent and/or significant changes in household circumstances, including but not limited to, homelessness, income and household status. A household with earned income is limited to a three-month certification period.

(2) **More Than Three Months:** A certification period of more than three months may be assigned if it is determined that household circumstances will remain stable throughout the certification period. A stable household is one which does not anticipate major changes in income, deductions, or household composition.

(3) **Financial Cash Assistance Households:** A household in which all members are contained in a single ~~financial~~ Cash Assistance grant ~~will~~ shall have a food stamp certification period which coincides with the ~~FA~~ Cash Assistance certification period.

(4) **Up to Twelve Months:**

(a) A household whose primary source of income is from self-employment (including self-employed farmers), or from regular farm employment with the same employer, may be certified for up to twelve months, provided the income can reason-

ably be anticipated and household circumstances are not likely to change.

(b) Annual certification periods ~~will~~ shall be assigned to a household which is paid an annual salary on a scheduled monthly basis, if the salary does not change as the amount of work changes.

(c) **Quarterly Reporting Households:** Households subject to Quarterly Reporting requirements shall be certified as set forth in 8.139.120.9 NMAC.

(5) **Aliens:** To the degree possible, aliens ~~will~~ shall be assigned a certification which ~~will~~ shall at some point coincide with the expiration date of the alien's legal alien status.

(6) **Elderly/Disabled Households:** A household in which all adult household members are elderly or disabled may be certified for up to 24 months. At least one contact with the household ~~must~~ shall be made every 12 months.

H. **Shortening the Certification Period:** ~~[The ISS may shorten a certification period under the following conditions:~~

~~(1) A reported change indicates that the new circumstances are unstable.~~

~~(2) A household entitled to expedited service has been assigned a certification period longer than one month, and postponed verification is not provided within 30 days of the date of application. The ISS must ensure that benefits are terminated by closing the case on the 30th day.~~

~~(3) For caseload management purposes, if, in the ISS's judgment, a household's circumstances permit a shorter eligibility period without adverse effects, and all other specific regulatory requirements are satisfied, an assigned certification period may be shortened.~~

~~(4) Shortening certification periods is discouraged in situations that would adversely affect elderly or disabled individuals with obvious transportation problems, or other difficulties in getting to the county office.]~~

(1) The caseworker may not end a household's certification period earlier than its assigned termination date, unless the caseworker receives information that the household has become ineligible, or the household has not taken action to clarify or provide verification of a change in household circumstances for which the caseworker has requested verification.

(2) Loss of cash assistance or a change in employment status is not sufficient to meet the criteria necessary for shortening a certification period.

I. **Lengthening the Certification Period:** The caseworker may lengthen a household's current certification period once it is established, as long as the total months of the certification period do

not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the caseworker extends the household's certification period, the caseworker shall issue written notice advising the household of the new certification end date.

[02/01/95, 01/01/97, 07/01/98; 8.139.500.12 NMAC - Rn, 8 NMAC 3.FSP.502.9, 05/15/2001; A, 02/14/2002]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.520 NMAC, Sections 8, 9, 10, and 11.

8.139.520.8 INCOME: The national income eligibility standards are based on the federal income poverty levels established in section 673(2) of the Community Services Block Grant Act [42 U.S.C. 9902(2)]. The net income standard is the federal income poverty guideline for the 48 contiguous states and the District of Columbia. The gross income standard is 130% of that amount. The income standards are adjusted annually each October 1st. Activities described in this section relate to the calculation of a household's income to determine eligibility and food stamp benefit amount.

A. **Elderly/Disabled Households:** Households which contain an elderly or disabled member, as defined in 8.139.[650] 100 NMAC, Definitions, must meet the net income eligibility standards listed in Subsection E of 8.139.500.8 NMAC.

B. **Other Households:** Households which do not contain an elderly or disabled member, as defined, must meet the gross income eligibility standards for the Food Stamp Program (FSP) (Subsection E of 8.139.500.8 NMAC). If a household is determined eligible based on gross income standards, deductions ~~will~~ shall be allowed in calculating net monthly income to arrive at a final eligibility determination based on net income standards.

C. **Categorically Eligible:** Title IV-A, GA and/or SSI households that are categorically eligible, as defined in 8.139.420.8 NMAC, do not need to meet the gross or net income eligibility standards. The food stamp benefit amount ~~will~~ shall be based on net income limits. Categorically eligible one- and two-person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than \$10.

D. **Income of Ineligible or Disqualified Household Members:**

(1) The earned or unearned income of an individual disqualified for intentional Program violation (IPV)[?] or for noncompliance with the Employment and Training (E&T) work requirements[~~—or because the individual is an ineligible alien,~~ will] shall be attributed in its entirety to the remaining members.

(2) The earned or unearned income of an individual disqualified for failing to provide or apply for a Social Security number [~~will~~] or because the individual is an ineligible alien shall continue to be counted as income, minus a pro rata share for the disqualified or ineligible member(s).

E. Income of Non-Household Members: The earned or unearned income of an individual listed below [~~will~~] shall not be considered available to the household with which the individual lives:

- (1) Roomers;
- (2) Boarders;
- (3) Foster children, if the household chooses not to include them;
- (4) Live-in attendants; and
- (5) Ineligible students.

[02/01/95, 07/01/97, 07/01/98, 06/01/99; 8.139.520.8 NMAC - Rn, 8 NMAC 3.FSP.520, 05/15/2001; A, 02/14/2002]

8.139.520.9 INCOME STANDARDS

A. Earned Income: Earned income includes the following:

(1) **Wages and Salaries:** All wages and salaries paid to an employee.

(2) **Sick Pay:** Sick pay is counted as earned income if the person receiving sick pay will be returning to work after recovery and is still considered an employee by the employer.

(3) **Military Personnel:** A household consisting of one or more military personnel receiving a basic allowance for quarters and/or basic allowance for subsistence instead of free housing and/or food [~~will~~] shall have such funds counted as earned income.

(4) **Self-Employment:** The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, minus the costs of doing business, is considered earned income. This is the gross income of the self-employed individual.

(5) **Rental Property:** Income from rental property is considered earned only if a household member is actively engaged in the management of the property an average of at least twenty (20) hours per week. The owner is allowed the cost of doing business.

(6) **Roomer or Boarder:**

Payments from a roomer or boarder are considered self-employment income. The 20 hours per week provision applied to rental property does not apply to roomer or boarder situations.

(7) **Training Allowances:** A training allowance from a vocational and rehabilitative program recognized by federal, state or local governments, such as DVR, is considered earned income, to the extent the training allowance is not a reimbursement.

(8) **VISTA Payments:** Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113 Stat., as amended) are considered earned income to applicant households not receiving food stamp benefits at the time the household member joined VISTA.

(9) [~~On the Job Training~~] **Workforce Investment Act:** Earnings of an individual participating in an on-the-job training program under [~~Section 204(5), Title II of the Job Training Partnership Act (JTPA)] Section 204 (b) (1) (C) or Section 254 (c) (1) (A) of the Workforce Investment Act (WIA).~~ This provision does not apply to household members under 19 years of age who are under the parental control of an adult member, regardless of school attendance or enrollment. Earnings include monies paid under the WIA and monies paid by the employer. This Section [~~204(5)] includes Adult and Youth Programs and Summer Youth Employment and Training Programs, but does not include Job Corps, E&T programs for Native Americans, migrant and seasonal farm workers, and veterans employment programs.~~

B. Unearned Income: Unearned income includes, but is not limited to, the following:

(1) **Federal Assistance Programs:** Assistance payments from federal or federally aided [~~financial~~] cash assistance programs, such as Supplemental Security Income (SSI), Title IV-A (Temporary Assistance to Needy Families), General Assistance (GA), or other assistance programs based on need. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, [~~will~~] shall be considered unearned income.

(2) **Other Benefits:** Annuities, pensions, retirement, veteran's or disability benefits, workman's compensation, unemployment compensation benefits (UCB), OASDI, and strike benefits are unearned income.

(3) **Foster Care Payments:** Foster care payments for children or adults [~~will~~] shall be counted in their entirety

unless the household providing the foster care chooses to exclude the foster child household member.

(4) **Support or Alimony:** Support or alimony payments made directly to the household from non-household members.

(5) **Educational Funds:** Scholarships, educational grants, fellowships, deferred payment loans for education, and veteran's educational benefits, are counted, after allowable deductions, unless the educational assistance is excluded in its entirety in Subsection E of 8.139.520.9 NMAC. Gifts or money a student may receive from parents or other private source on a periodic basis [~~will~~] shall be counted as unearned income, including the portion used to pay for tuition and mandatory fees.

(6) **Government-Sponsored Programs:** Payments to individuals from Individual Indian Monies and grants from the Bureau of Indian Affairs.

(7) **Gain or Benefit:** Dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or a benefit to the household. Interest income includes payments on a bank account that are simply posted in a bank book and not paid directly to a household.

(8) **Trust Funds:** Money withdrawn or dividends that are or could be received by a household from a trust fund considered an excludable resource. Such trust withdrawals [~~will~~] shall be considered income in the month received, unless excluded in Subsection D of 8.139.520.9 NMAC. Dividends which the household has the option of either receiving as income or reinvesting in the trust [~~will~~] shall be considered income in the month they become available to the household, unless excluded per Subsection D of 8.139.520.9 NMAC.

(9) **Rental Property:** Income from rental property [~~will~~] shall be considered unearned when a household member engages in the management of the property less than 20 hours per week. The gross income minus the cost of doing business is counted as household income.

(10) **Sponsored Alien Income:** The amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that is deemed to be that of the alien (Subsection G of 8.139.420.9 NMAC).

(11) **Termination Pay:** Severance pay (e.g., two weeks pay instead of notice) and Supplementary Unemployment Benefits (a series of payments similar to UCB, but paid by the employer) received after termination [~~will~~] shall be considered unearned income.

(12) **Vacation or Sick Pay:**

Unused vacation or sick pay paid in installments over a period of at least two months is considered unearned income in the months received. If paid as a lump sum at termination of employment, the income is considered a resource in the month received.

(13) Cash Awards, Gifts, Prizes: Cash awards, gifts, prizes and winnings ~~will~~ shall be considered unearned income in the month received, subject to the \$30.00 per quarter exclusion, even if paid on a one-time basis.

(14) One-Time Income: The distinction between one-time income and a one-time lump sum resource is that a lump sum is money owed the household from a past period and paid retroactively.

C. Other Countable Income:

(1) Legal Entitlement: Any payment that a household is legally entitled to receive, but is diverted by the provider of the payment to a third party for an expense incurred or owed by the household ~~will~~ shall be counted as income. The distinction is whether the individual or organization making a payment on behalf of a household is using funds that otherwise must be paid to the household, such as wages, ~~financial~~ Cash Assistance grant, or child support or alimony payments. In these cases, a household is legally entitled to the money. If an employer, agency, or former spouse who owes such funds to a household diverts the money to a third party to pay for a household expense, the money is still counted as income, unless a court orders the money diverted.

(2) Garnished Wages: Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household expense ~~will~~ shall be counted as income.

(3) Public Assistance: All or part of a public assistance grant that is normally provided by a money payment to a household, but is diverted to a third party or to a protective payee for purposes of managing expenses, ~~will~~ shall be counted as income.

(4) Third Party Energy Assistance Payments: Any payment made to a household under a state law to provide energy assistance ~~will~~ shall be considered money payable directly to the household, unless under the law the payment cannot be provided in cash.

D. Excluded Income: The following income ~~will~~ shall be excluded in determining FS benefits:

(1) Federal Laws: Income excluded by federal laws. The comprehensive list is found in 8.139.527 NMAC.

(2) In-Kind Benefits: Any

gain or benefit which is not in the form of money paid directly to the household, including non-monetary or in-kind benefits such as meals, clothing, public housing, gifts for special occasions, or produce from a garden.

(3) Vendor Payments: Money payments that a household is not legally entitled to receive, and which are paid directly to a third party for a household expense are considered a vendor payment. A money payment made on behalf of a household is considered a vendor payment whenever an individual or organization outside the household uses its own funds to make a direct payment to a household's creditors, or to a person or organization providing a service to a household. Vendor payments include but are not limited to:

(a) Rent paid directly to the landlord by a friend or relative, who is not a household member;

(b) Rent or mortgage payments made to landlords or the mortgagee by the Department of Housing and Urban Development (HUD) or by a state or local housing authority;

(c) Payments by a government agency to a child care institution to provide day care for a household member;

(d) Insurance company payments made directly to titleholders or loan companies when a household member becomes disabled or dies and is covered by credit life and disability insurance;

(e) Housing assistance payments made to a third party on behalf of a household residing in transitional housing for the homeless;

(f) A rent payment by an employer made directly to the landlord, in addition to paying the household its regular wages, is considered a vendor payment and is excluded as income.

(4) Energy Assistance: Any payment or allowance made for the purpose of providing energy assistance under any Federal law, except for a payment or allowance provided under Title IV-A of the Social Security Act; any Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices.

(5) State or Local General Assistance: Any general assistance provided to a household which cannot, under State law, be provided in cash directly to a household.

~~**(6) Other Excluded Income:**~~

~~**(a) Child Care Food Program:** Payments made to a household from the Child Care Food Program for child care, or any amount received as payment for care or reimbursement for costs incurred is excluded income.~~

~~**(b)-(7) Plan for Achieving**~~

Self-Support (PASS) Program: Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support which has been approved under Sections 1612 (b)(4) (A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. The income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

~~**(e)-(8) Infrequent/Irregular**~~

Income: Any income received in the certification period which is received too infrequently or irregularly to be reasonably anticipated. The income received cannot exceed \$30.00 in a quarter.

~~**(d)-(9) Lump-Sum Payment:**~~

Money received in the form of a nonrecurring lump sum payment, including but not limited to income tax refunds; rebates or credits; retroactive lump sum Social Security or SSI; ~~financial~~ Cash Assistance; railroad retirement; or other similar payments. Lump sum insurance settlements and refunds of security deposits on rental property or utilities are counted as resources in the month received, unless specifically excluded from consideration as a resource by federal law.

~~**(10) TANF Diversion:** A~~

~~TANF payment made to divert a family from becoming dependent on cash assistance shall be considered as a nonrecurring lump-sum payment if the payment is not defined as ongoing monthly assistance.~~

~~**(e)-(11) Loans:**~~

All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

~~**(f)-(12) Charitable**~~

Donations: Charitable cash donations based on need from one or more private, nonprofit charitable organizations, not to exceed \$300 in a federal fiscal quarter (January through March, April through June, July through September, and October through December).

~~**(g)-(13) Earned Income Tax**~~

Credit (EITC): EITC payments received either as a lump sum, or advance payments of earned income tax credits received as part of a paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year.

~~**(h)-(14) Diverted**~~

Retirement Income: The portion of a civil service retirement annuity or military retirement payment that is diverted to a former spouse by court order in a divorce decree is excluded from the income of the retiree.

~~**(i)-(15) Annual Clothing**~~

Allowance: The clothing allowance provided each year to an ~~PROGRESS~~ TANF household whose children are entering or returning to school.

~~**(j)-(16) Utility**~~

Reimbursements: Any amount paid by the Department of Housing and Urban Development (HUD) or Farmers Home Administration (FmHA) to a household as a utility reimbursement, or to a utility provider on behalf of a household, is excluded income.

E. Educational Expenses:

(1) **Title IV/BIA:** [Financial] Cash Assistance received under Title IV of the Higher Education Amendments of 1992, including federal college work study authorized under Title IV, or [financial] cash assistance received from Bureau of Indian Affairs student assistance programs [will] shall be excluded in determining eligibility and food stamp benefit amounts effective for award years beginning on or after July 3, 1993.

(2) **Title XIII:** Financial assistance received under Title XIII of the Tribal Development Student Assistance Act [will] shall be excluded in determining eligibility and food stamp benefit amounts effective October 1, 1992.

(3) **Earmarked Funds:** All educational assistance, including, but not limited to, educational loans on which payment is deferred, grants, scholarships, fellowships, veteran's educational benefits, and the like, provided for a student to participate in or attend a recognized institution of post-secondary education, school for the handicapped, vocational education program, or program that provides for the completion of a secondary (i.e., high school) diploma or equivalency (GED), [will] shall be excluded to the extent that the assistance is either used or made available for:

- (a) Tuition;
- (b) Mandatory fees, including rental or purchase of any equipment, materials, and supplies required to pursue the course of study involved;
- (c) Books and supplies;
- (d) Transportation expenses;
- (e) Origination fees and insurance premiums on student loans; and
- (f) Miscellaneous personal expenses (other than living expenses) incidental to a student's attendance at a school, institution, or program.

(4) **Restrictions:**

(a) Educational assistance provided for normal living expenses (room, board, and dependent care) [will] shall not be excluded as income.

(b) Educational expenses in excess of the educational assistance provided may not be deducted from other income.

(c) A student household eligible for a deduction for dependent care expenses may claim only the amount which exceeds the amount of educational assistance made available for dependent care.

(5) **Deferred Payment**

Educational Loans: Any amount of state, local, or private deferred payment educational loans [will] shall be excluded to the extent that the lender specifically earmarks or budgets part of or all of the loan for educational expenses. If the institution, school, program, or other lender does not earmark or budget amounts from the loan for educational expenses, students receive an exclusion for amounts verified as an educational expense.

F. Reimbursements:

(1) **Past or Future Expenses:** Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household, [will] shall be excluded.

(2) **Identified Expense:** Reimbursements made for an identified expense, other than normal living expenses, and used for the purpose intended, [will] shall be excluded.

(3) **Normal Living Expenses:** Reimbursements for normal living expenses, such as rent or mortgage, clothing, or food eaten at home, [will] shall be considered a gain or benefit to a household and are not excluded.

(4) **Multiple Expenses:** If a reimbursement, including a flat allowance, covers multiple expenses, each expense does not need to be identified separately, as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense [will] shall be counted as income.

(5) **Excludable Reimbursements:**

(a) **Job/Training Related:** Reimbursements or flat allowances for job or training-related expenses, such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements provided over and above the basic wages for such expenses are excluded. However, these expenses, if not reimbursed, are not otherwise deductible from income.

(b) **Migrant Worker Expenses:** Reimbursements for travel expenses incurred by migrant workers.

(c) **Volunteers:** Reimbursements for out-of-pocket expenses incurred by volunteers in the course of their work;

(d) **Medical or Dependent Care:** Medical or dependent care reimbursements.

(e) **Nonfederal Educational Expense:** Nonfederal reimbursements or allowances for students for specific educational expenses, such as travel or books, but not allowances for normal living expenses

such as food, rent, or clothing [will] shall be excluded. Portions of a general grant or scholarship must be specifically earmarked by the grantor as an educational expense rather than for living expenses to be excludable as a reimbursement;

(f) **Title XX Services:** Reimbursements received by households to pay for services provided by Title XX of the Social Security Act;

(g) **E&T Program:** Reimbursements for expenses necessary for participation in an education component to fulfill E&T work requirements in a work program.

(6) **Nonexcludable Reimbursements:**

(a) **Title IV-A Grant:** No portion of an Title IV-A grant [will] shall be excluded as a reimbursement if the grant is increased to adjust for work-related or child care expenses.

(b) **Educational Funds:** No portion of any federal or nonfederal (state, local, private) educational loan, grant, scholarship, fellowship, veteran's educational benefit and the like [will] shall be excluded as a reimbursement, to the extent that it provides income assistance for normal living expenses.

G. Payments for Third Party Beneficiary: Payments received and used for the care and maintenance of a third-party beneficiary who is not a household member [will] shall be excluded as income. If the intended beneficiaries of a single payment include both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of a nonmember is excluded. If the nonmember's share cannot be readily identified, the payment is divided equally among intended beneficiaries. The exclusion is applied to the nonmember's pro rata share, or the amount actually used for the nonmember's care and maintenance, whichever is less.

H. Earned Income of a Student: The earned income of an elementary or secondary school student living in the same food stamp household with a natural, adoptive or step-parent, or under the parental control of another member of the same food stamp household other than a parent, [will] shall be excluded if the student is:

- (1) Under age 18, and is
- (2) Attending classes, including GED classes, at least half-time.

(3) **Temporary Interruptions:** The exclusion [will] shall continue to apply during temporary interruptions in school attendance for semester or vacation breaks, provided that the child's enrollment will resume following the break.

- (4) **Child's/Other Members**

Income: If a child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings ~~[will]~~ shall be divided equally among the working members and the child's pro rata share ~~[will]~~ shall be excluded.

(5) Child Turns 18 Years Old:

The earnings of students ~~[will]~~ shall be counted beginning the month following the month the student turns 18.

I. Money Owed to Other

Sources:

(1) Money Withheld to Repay

Previous Overpayments: Money withheld to repay prior overpayments (recoupments) or money voluntarily or involuntarily returned from an assistance payment, earned income, or other income source ~~[will]~~ shall be excluded from income, provided that:

(a) Repayment is made from the same income source, and

(b) The income is from a countable income source.

(c) This exclusion applies only to recoupment or repayment situations.

(2) Other Withholding:

Money withheld for any other purpose is considered income. Money withheld for other purposes include: Medicare premiums; processing fees for child support payments collected by CSED; and deductions (taxes, insurance, etc.) from unearned income, such as Civil Service, PERA, and military retirement benefits.

(3) Failure To Comply With Another Assistance Program's Requirements or Fraud:

A household's food stamp benefit amount ~~[will]~~ shall not increase when benefits received from another program have been decreased (reduced, suspended or terminated) because of a determination by the other program of intentional failure to comply with a requirement of the other program or an act of fraud. This provision applies in cases where the other program is a means-tested, federal, state or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds.

(a) Conditions:

(i) If the Department is not able to obtain necessary cooperation from another federal, state or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the Department is not held responsible as long as a good faith effort to obtain the information has been made.

(ii) A household's current food stamp benefit amount ~~[will]~~ shall not be reduced, suspended or terminated when the benefits under another assistance program have been decreased.

(iii) Food stamp benefits ~~[must]~~ shall be adjusted when eligible members are added to the food stamp household regardless whether or not the household is prohibited from receiving benefits for the additional member under another federal, state, or local welfare or public assistance means-tested program.

(iv) Changes in household circumstances which are not related to a penalty imposed by another Federal, State or local welfare or public means-tested assistance program ~~[will]~~ shall not be affected by this provision.

(b) This provision does not apply to individuals or households subject to disqualification for noncompliance with E & T work requirements which are comparable to Title IV or UCB work requirements in Subsection H of 8.139.410.12 NMAC. In such cases, an individual or household disqualification occurs and food stamp benefits are reduced.

(c) There is no time restriction on the application of this provision. The prohibition against increasing food stamp benefits ~~[will]~~ shall apply for the duration of the penalty imposed by the welfare or public assistance program.

(d) **Recoupments:** Food stamp benefits ~~[will]~~ shall not increase in cases where the household is subject to either a reduction in benefits and/or recoupment due to intentional failure to comply with the other program's requirements. Food stamp benefits ~~[will]~~ shall not increase as long as a reduction and/or recoupment is in effect.

(e) This provision does not result in a reduction, termination, or suspension of a household's current food stamp benefit amount, therefore ~~[an ISS]~~ a caseworker need not send an adverse action notice. ~~[An ISS]~~ A caseworker may send adequate notice to a household affected by this provision.

(4) Child Support Payments Transferred Under Title IV-D: A child support payment received by a ~~[financial]~~ Cash Assistance household that must be transferred to or retained by the Child Support Enforcement Division (Title IV-D) to maintain ~~[financial]~~ Cash Assistance eligibility, ~~[will]~~ shall be excluded as income. [02/01/95, 10/01/95, 11/01/96, 01/01/97, 07/01/97, 11/01/97, 06/01/99; 8.139.520.9 NMAC - Rn, 8 NMAC 3.FSP. 521, 05/15/2001; A, 02/14/2002]

8.139.520.10 C O U N T I N G INCOME

A. Income Averaging:

(1) Optional Income

Averaging: Income received by a household may be averaged at the household's option (See 8.139.500.10 NMAC) except as specified below.

(2) Mandatory Income

Averaging: Averaging is mandatory for income received under the following circumstances:

(a) Contract or self-employment income;

(b) Educational monies.

B. Rounding Off:

Calculations ~~[will]~~ shall be rounded to the nearest dollar. Figures between one cent and forty-nine cents (1¢ - 49¢) are rounded down; figures between fifty cents and ninety-nine cents (50¢ - 99¢) are rounded up. When adding gross amounts received weekly, biweekly or semi-monthly to arrive at the monthly income, cents are retained until the total monthly amount is determined; the total monthly amount is rounded as the final step. Cents resulting from the computation of the twenty percent (20%) earned income deduction are rounded before being subtracted from earned income. Cents are retained in the computation of shelter and medical expenses until the final step.

C. Ineligible or Disqualified Household Members: An ineligible or disqualified household member ~~[will]~~ shall not be included when:

(1) Determining the maximum food stamp benefit amount for the household's size;

(2) Comparing the household's monthly income with the income eligibility standards; or

(3) Comparing the household's resources with the resource eligibility limits.

(4) Intentional Program Violation (IPV) or Work Disqualified:

(a) The income and resources of individuals disqualified for IPV or non-compliance with E&T work requirements ~~[will]~~ shall be counted in their entirety.

(b) A household's allowable deductions for earned income, medical expenses, dependent care expenses, excess shelter expenses, and the standard deduction continue to apply to the remaining household members.

(c) HSD ~~[must]~~ shall make sure that a household's food stamp benefit amount is not increased as a result of the disqualification of one or more members.

(5) Ineligible Alien or SSN Disqualified:

(a) **Resources:** Resources of ineligible aliens, or individuals disqualified for failure or refusal to apply for or provide a Social Security Number, ~~[will]~~ shall be counted in their entirety.

(b) Income and Deductions of Ineligible Aliens:

(i) ~~[All the income of an ineligible alien will be counted to the remaining eligible household members.]~~ Income belonging to the ineligible alien

shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the ineligible alien's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii) The 20% earned income deduction is applied to the countable income attributed to the remaining eligible household members.

(iii) The ~~portion of~~ allowable expense(s) either billed to or paid by the ineligible alien ~~with~~ shall be allowed in its entirety as a household expense.

(c) Income and Deductions for ABAWD or SSN Disqualified Individuals:

(i) Income belonging to ~~the SSN disqualified~~ an individual ~~with~~ disqualified because of ABAWD status or failure or refusal to provide a Social Security Number shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the disqualified member's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii) The 20% earned income deduction is applied to the countable income attributed to the remaining household members.

(iii) The portion an allowable expense ~~expense~~ either paid by or billed to a disqualified individual(s) is divided evenly among all household members, including the disqualified individual(s). All but the disqualified individual's share is counted as a deductible expense for the remaining household members.

(6) Reduction/Termination During Certification Period: When an individual is excluded or disqualified during the certification period, the ~~ISS will~~ caseworker shall determine the eligibility of the remaining household members based on information already in the case record.

(7) Excluded for IPV Disqualification: If a household's benefits are reduced or terminated during the certification period because one of its members was disqualified for an IPV, the ~~ISS will~~ caseworker shall notify the remaining household members of changes in eligibility and food stamp benefit amount at the same time the excluded member is notified of the disqualification. The household is

not entitled to an adverse action notice but may request a fair hearing to contest the reduction or termination of benefits, unless it has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

(8) Excluded for Other Causes: If a household's benefits are reduced or terminated during the certification period because one or more of its members is an ineligible alien, is disqualified for failure to comply with E&T work requirements, disqualified for failing or refusing to apply for or provide a Social Security number, the ~~ISS will~~ caseworker shall issue an adverse action notice informing the household of the individual's ineligibility, the reason for the ineligibility, the eligibility and benefit amount of the remaining member(s), and the actions the household must take to end the disqualification.

D. Nonhousehold Members:

(1) Income and Resources: The income and resources of nonhousehold members, such as certain students, roomers, and boarders, are not considered available. Cash payments from a nonhousehold member to the household ~~with~~ shall be counted as income (Subsection E of 8.139.520.8 NMAC). Vendor payments (Subsection D of 8.139.520.9 NMAC) ~~with~~ shall be excluded as income.

(2) Deductible Expenses: If a household shares deductible expenses with a nonhousehold member, only the amount actually paid or contributed by the household is deductible as an expense. If the payments or contributions cannot be differentiated, the expenses ~~must~~ shall be divided evenly among individuals actually paying or contributing to the expense; only the household's pro rata share is deducted.

(3) Combined Income of Household/Nonhousehold Members: When the earned income of one or more household members and the earned income of a nonhousehold member are combined as one wage, the income for the household ~~with~~ shall be determined as follows:

(a) If the household's share can be identified, it is counted as earned income.

(b) If the household's share cannot be identified, the ~~ISS will~~ caseworker shall divide the earned income among all those whom it was intended to cover and count a prorated share to the household.

E. Self Employed Household The following guidelines ~~with~~ shall be used to determine eligibility and food stamp benefit amount for self-employed households, including those households that own or operate commercial

boarding houses. Households with self-employment income only, shall not be subject to Quarterly Reporting (8.139.120.9 NMAC).

(1) Averaging Self Employment Income:

(a) Annualizing:
(i) Households which by contract or self-employment derive their annual income in a period of time shorter than one year ~~must~~ shall have income averaged over a 12-month period, provided that the income from the contract is not received on an hourly or piecework basis.

~~(ii)~~ **(ii)** Households that have self-employment income only and annualize their self-employment income shall not be subject to Quarterly Reporting requirements.

~~(iii)~~ **(iii)** Annualizing ~~does~~ shall not apply to seasonal or migrant farm workers.

~~(iv)~~ **(iv)** Self-employment income representing a household's annual income ~~is~~ shall be averaged over a 12-month period, even if the income is received within only a short period of time.

~~(v)~~ **(v)** The self-employment income ~~with~~ shall be annualized even if the household receives income from other sources in addition to self-employment. Only the income received from the other sources shall be subject to Quarterly Reporting requirements as outlined in 8.139.120.9 NMAC, if the self-employment income is annualized.

~~(vi)~~ **(vi)** Self-employed households include, but are not limited to, school employees, sharecroppers, and farmers. Tenured teachers who may not actually have a signed contract ~~with~~ shall have their income considered on this basis.

~~(vii)~~ **(vii)** For self-employed households that receive their annual income in a short period of time, an initial certification period is assigned to bring the household into the annual cycle.

~~(viii)~~ **(viii)** Households which receive their annual income from self-employment and have no other source of income may be certified for up to twelve (12) months.

(b) Anticipated Income:

(i) If the averaged annualized amount or self-employment income received on a monthly basis does not accurately reflect a household's actual circumstances because it has experienced a substantial increase or decrease in business, self-employment income ~~with~~ shall be calculated on anticipated earnings.

(ii) Income ~~with~~ shall not be calculated based on previous income (e.g., income tax returns) if a self-employed household has experienced a substantial increase or decrease in business.

(c) **Projected Income:** If a household's self-employment enterprise has been in existence for less than one year, the income from self-employment ~~will~~ shall be averaged over the period of time the business has been in operation. The resulting monthly amount ~~will~~ shall be projected for the coming year. If the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household ~~must~~ shall be certified for short periods of time until the business has been in operation long enough to make a longer projection.

(d) **Seasonal Income:** Self-employment income which is intended to meet the household's needs for only part of the year ~~will~~ shall be averaged over the period of time the income is intended to cover.

(2) Determining Monthly Self-Employment Income:

(a) For the period of time over which self-employment income is averaged, the ~~ISS must~~ caseworker shall add all self-employment income, including capital gains, exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income ~~will~~ shall be averaged.

(b) A capital gain is defined as proceeds from the sale of capital goods or equipment. Capital gains are counted in full as income to determine self-employment income.

(c) For households with self-employment income calculated on an anticipated basis, the ~~ISS will~~ caseworker shall add any capital gains the household anticipates receiving in the next 12 months, beginning with the date the application is filed. The resulting amount is counted in successive certification periods during the 12 months, except that a new average monthly amount is calculated if the anticipated amount of capital gains changes.

(3) Determining Net Self-Employment Income:

(a) A household's total self-employment income, minus the allowable costs of producing the income, ~~will~~ shall be counted as gross income to the household. The gross self-employment income ~~will~~ shall be added to any other earned income.

(b) The total monthly gross earned income, after allowing the 20% earned income deduction, is added to all monthly unearned income to determine income eligibility.

(c) For households anticipating income, the cost of producing income is calculated by anticipating allowable costs of producing the self-employment income.

(d) Expenses exceeding self-

employment income ~~will~~ shall not be deducted from other income.

(e) If a self-employment enterprise is a farming or ranching operation, expenses exceeding self-employment income may be offset against any other countable household income, provided that the farming or ranching operation grosses or is anticipated to gross at least \$1,000 annually.

(4) Allowable Costs:

Allowable costs of producing self-employment income include, but are not limited to:

(a) identifiable costs of labor, stock, raw material, seed and fertilizer,

(b) ~~payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods,~~

(c) interest paid to purchase income-producing property,

(d) insurance premiums, and taxes paid on income-producing property,

(e) transportation costs necessary to produce self-employment income, such as farmers carrying grain to elevators, or trips to obtain needed supplies, are allowable costs of doing business. Costs are allowed at \$.25 per mile.

(f) ~~payment of gross receipts taxes.~~

(5) **Costs Not Allowed:** In determining net self-employment income, the following ~~will~~ shall not be allowed as a cost of doing business:

~~(a) Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;~~

~~(b)~~ (a) Net losses from previous periods;

~~(c)~~ (b) Federal, state, and local personal income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), since these expenses are accounted for by the 20 percent earned income deduction (Paragraph 3 of Subsection E of 8.139.520.10 NMAC);

~~(d)~~ (c) Charitable contributions and entertainment; and

~~(e)~~ (d) Depreciation.

F. Boarders:

(1) Individuals paying a reasonable amount for room and board ~~will~~ shall be excluded from a household when determining the household's eligibility and food stamp benefit amount.

(2) Payments from a boarder ~~will~~ shall be counted as self-employment income.

(3) Household income eligibility is determined as follows:

(a) Income from a boarder includes all direct payments to the house-

hold for room and meals, including contributions for shelter expenses.

(b) Shelter expenses paid by a boarder directly to someone outside the household ~~will~~ shall not be counted as income. Such payments are considered vendor payments, and are not used to determine reasonable compensation (Paragraph 4 of Subsection C of 8.139.400.11 NMAC), or as a shelter expense for the household.

(4) After determining the income received from a boarder, the ~~ISS will~~ caseworker shall exclude the portion of the boarder payment which is a cost of doing business. The cost of doing business is equal to either of the following, provided that the amount allowed as a cost of doing business does not exceed the payment the household receives from the boarder for lodging and meals:

(a) The amount of the Maximum Food Stamp Allotment for a household size that is equal to the number of boarders (Subsection E of 8.139.500.8 NMAC); or

(b) The actual documented cost of providing room and meals if the actual cost exceeds the appropriate Maximum Food Stamp Allotment. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders are excluded.

[02/01/95, 07/01/98; 8.139.520.10 NMAC - Rn, 8 NMAC 3.FSP.524, 05/15/2001; A, 02/14/2002]

8.139.520.11 GENERAL DEDUCTIONS

A. Use of Deductions: A household must qualify for deductions by first meeting a gross income test. A household is not eligible if gross income is more than the standard listed in Subsection E of 8.139.500.8 NMAC for a household size. If income falls below the gross income limit, a household ~~will~~ shall be allowed deductions, where applicable, to make a final eligibility and benefit amount determination. Households that include elderly or disabled members, as defined, automatically qualify for deductions; eligibility is determined based on net rather than gross income.

B. Standard Deduction: All households are allowed a standard deduction from income. The standard deduction is listed in Paragraph 3 of Subsection F of 8.139.500.8 NMAC, Tables, and is adjusted effective every October 1st.

C. Earned Income Deduction: Twenty percent (20%) of gross earned income ~~will~~ shall be deducted. Excluded income is not used for purposes of computing the earned income deduction.

(1) Computing an Overissuance: The earned income deduc-

tion (EID) ~~will~~ shall not be allowed when calculating the income to be used in determining an overissuance which is due to the failure of a household to report earned income in a timely manner.

(2) **Work Supplementation Programs:** The EID ~~will~~ shall not be allowed for any amount of income which is earned under a work supplementation or support program and is attributable to public assistance.

D. Medical Deductions: Allowable medical deductions include:

(1) **Elderly/Disabled:** Medical expenses in excess of \$35.00 per month, excluding special diets, incurred by any household member who is elderly or disabled.

(2) **Emergency SSI:** Individuals receiving emergency SSI benefits based on presumptive eligibility ~~will~~ shall be eligible for the medical deduction.

(3) **Death:** A medical expense incurred by a household member who dies ~~will~~ shall be allowed as a deduction if the member was eligible for the deduction at the time of death and if the remaining household members are legally responsible for payment.

(4) **Hospital /Outpatient /Nursing Home:** Medical expenses, such as hospitalization or outpatient treatment, nursing care and nursing home care, including payments by a household for an individual who was an eligible household member immediately before entering a hospital or nursing home facility recognized by the state, are allowable deductions.

(5) **Not Eligible:** Spouses, children or other individuals in the household who are not elderly or disabled, ~~will~~ shall not be entitled to claim the medical deduction.

(6) **Allowing Medical Expenses:**

(a) **One-Time Only Expense:**
(i) A household may choose to have a one-time only expense, reported at certification, deducted in a lump sum or averaged over the certification period.

(ii) If a household incurs a one-time medical expense and has made arrangements with the provider to make monthly installments (beyond the current certification period), the expense may be allowed each month as arranged.

(iii) A household reporting a one-time only medical expense during its certification period may choose to have a one-time deduction or to have the expense averaged over the remaining months of the certification period.

(b) Households Certified for 24 Months: A household certified for 24 months cannot have a one-time medical

expense averaged over the 24-month certification period.

(i) A one-time medical expense may be deducted in the first month of the 24-month certification period; or the one-time medical expense may be deducted and averaged over the first 12 months of the 24-month certification period.

(ii) One-time medical expenses reported after the first 12 months of the certification period shall be averaged over the remaining months.

~~(b)~~ (c) **Expense in Last Month of Certification:** If a household is billed for and reports an expense during the last month of its certification period, the deduction ~~will~~ shall not be allowed. If the expense will be paid in installments during the following certification period, the deduction ~~will~~ shall be allowed during the appropriate number of months in the subsequent certification period.

~~(e)~~ (d) **Fluctuating Expenses:** Fluctuating medical expenses ~~will~~ shall be allowed as deductions if regularly recurring, reasonably anticipated, and verified. Once determined, the household is not required to report changes of \$25 or less or reverify expenses each month.

~~(d)~~ (e) **Anticipated Changes in Expenses:** At certification and recertification the household must report and verify all medical expenses. The household's monthly medical deduction for the certification period ~~will~~ shall be based on ~~the information reported and verified by the household, and any~~ :

(i) anticipated changes in the household's medical expenses that can ~~be~~ reasonably be expected to occur during the certification period based on available information about the recipients medical condition, public or private insurance coverage, and current verified medical expenses~~[-]; and~~
(ii) ~~expenses that occurred during the certification period that will continue in the new certification period; and~~

(iii) ~~consideration of unpaid and past due medical expenses that will continue in the certification period. [A household will not be required to file reports about its medical expenses during the certification period. If a household voluntarily reports a change in its medical expenses, the ISS will act on the change in accordance with regulations in (e) of Paragraph 1 of Subsection B of 8.139.120.9 NMAC.]~~

~~(e)~~ (f) If a household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated

based upon available information about the recipients's medical condition and public or private medical insurance coverage, the household ~~will~~ shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified.

(g) A household shall not be required to file reports about its medical expenses during the certification period. If a household voluntarily reports a change in its medical expenses, the caseworker shall act on the change in accordance with regulations in (c) of Paragraph 1 of Subsection B of 8.139.120.10 NMAC.

(7) **Past Due and Unpaid Medical Expenses:** The medical expense deduction ~~will~~ shall not be determined by averaging past ~~month's~~ due or unpaid monthly medical expenses. ~~Past~~ Such expenses ~~will~~ shall be used only as an indicator of what can reasonably be anticipated. Medical expenses which the household might reasonably anticipate receiving include but are not limited to costs of medical services and treatment received regularly, but less often than monthly, and prescription drugs.

(8) **Medical and Dental Care:** Medical and dental care, psychotherapy, and rehabilitation services, provided by licensed practitioners authorized by state law, or other qualified health professional, ~~will~~ shall be allowed as medical expense deductions. State licenses in New Mexico are authorized by occupational licensing boards. A state-licensed practitioner has such a license. Native American practitioners (medicine men) are not licensed, but are recognized as health practitioners for this purpose.

(9) **Prescription Drugs and Medical Supplies:** Prescription drugs, when prescribed by a licensed practitioner authorized under state law, and over-the-counter medications (including insulin) when approved by a licensed practitioner or other qualified health professional, ~~will~~ shall be allowed as deductions. In addition, costs for medical supplies, sick-room equipment (including rental), or other prescribed equipment are deductible.

(10) **Health and Hospitalization/Medicare Premiums:** Health and hospitalization insurance premiums, and Medicare premiums, as well as any cost sharing or spend-down expenses incurred by Medicaid recipients, are allowable deductions. If a medical insurance policy includes benefits for household members not eligible for a deduction, only that portion of the premium assigned to the eligible member(s) may be considered a deduction. In the absence of specific information about how much of the premium is

for the eligible member(s), a pro rata amount may be used. This system may be used even if the policy holder does not qualify for the deduction but the policy includes a person(s) who does qualify. The cost of life or health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies that continue mortgage or loan payments while the beneficiary is disabled, are not deductible.

(11) Transportation and Lodging Costs: Reasonable costs of transportation and lodging to obtain medical treatment or services are deductible. The allowance for mileage in privately owned vehicles is the same as the amount allowed state employees. Lodging costs may not exceed the daily expense amount allowed (per diem) for state employees.

(12) Maintaining an Attendant: Costs of maintaining an attendant, homemaker or home health aide, child care services, or housekeeper that are necessary because of age, infirmity, or illness are deductible medical expenses. In addition, an amount equal to the food stamp benefit amount for one person is deductible if the household furnishes the majority of the attendant's meals. The food stamp benefit amount for the meal-related deduction is the one in effect at the time of initial certification. The ~~[ISS must]~~ caseworker shall update the food stamp benefit amount for meals at the next scheduled recertification. If a household incurs attendant care expenses that could qualify under both the medical deduction and the dependent care deduction, the ~~[ISS will]~~ caseworker shall treat the expense as a medical expense.

(13) Other Expenses: Other deductible expenses include but are not limited to:

- (a) Dentures, hearing aids, prosthetics;
- (b) Securing and maintaining a seeing-eye or hearing dog, or other service animal, including the cost of dog food and veterinary bills; and
- (c) Eyeglasses or contact lenses prescribed by an ophthalmologist or an optometrist.

E. Dependent Care Expenses:

(1) Deductible Amounts: Payments may be deducted for the actual cost of the care of children or other dependents when necessary for a household member to accept or continue employment, comply with E&T work requirements, or an equivalent effort by those not required to comply with E&T work requirements, or attend training or pursue education which is preparatory to employment or leads to a degree. An amount up to the maximum allowed may be deducted for each child

requiring dependent care (See Paragraph 3 of Subsection F of 8.139.500.8 NMAC, Deductions and Standards).

(2) Household Member Provides Care: If a household member provides dependent care, the payment is neither income to the payee nor a deduction for the payor (see Subsection A of 8.139.500.11 NMAC).

(3) Income Excluded/Deduction Allowed: Households whose dependent care costs are paid in accordance with 8.139.527 NMAC, Income and Resources Excluded by Federal Law, ~~[will]~~ shall be entitled to a dependent care deduction only for the amount of the child care expense not reimbursed by a work program or Transitional Day Care (TDC) Program. Child care expenses reimbursed or paid by a work program or TDC are not deductible.

F. Household Expenses:

(1) Shelter Expenses:

(a) Definition: Continuing charges for the shelter occupied by a household include rent, mortgage payment, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home and interest on such payments. If payments are made on more than one mortgage on the home, each payment is counted for the period the payment is intended to cover. Security deposits on rental property and downpayments for the purchase of a home are not allowed as shelter expense deductions. Closing costs ~~[will]~~ shall not be allowed as a shelter expense, unless the closing costs can be itemized to identify costs that are allowable deductions, such as insurance and property taxes.

(b) Excess Shelter Expense Deduction: Monthly shelter expenses in excess of fifty percent (50%) of a household's income, after all other deductions have been allowed may be deducted, subject to the following restrictions:

(i) The shelter deduction may not exceed the maximum amount indicated in Paragraph 3 Subsection F of 8.139.500.8 NMAC, unless the household contains a member who is elderly or disabled, as defined.

(ii) Households may not claim shelter expenses if the expense ~~[will]~~ shall be paid as a vendor payment by an individual or organization outside the household.

(iii) The household must be responsible for payment of the shelter expense; however the household need not have paid the expense to claim the deduction. A current billing statement is used to establish the expense. The expense may not be allowed more than once.

(2) Taxes and Insurance:

Property taxes, state and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings, are deductible expenses.

(3) Natural Disasters: Expenses for the repair of a home that has been substantially damaged or destroyed by a natural disaster such as fire or flood may be deducted. Expenses ~~[will]~~ shall not be allowed if the household has been or will be reimbursed by public or private relief agencies, insurance companies, or any other source. Expense deductions are limited to the repair of the home and not its furnishings.

(4) Costs of Temporarily Unoccupied Home:

(a) If the home is temporarily unoccupied by a household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss, the shelter costs for the home may be deducted. However, a household may claim only one SUA.

(b) For costs of a home vacated by the household to be included in its shelter costs:

(i) The household must intend to return to the home;

(ii) The current occupants of the home, if any, cannot be claiming shelter expenses for food stamp purposes;

(iii) The home cannot be leased or rented during the household's absence.

(c) Verification is required of households claiming this deduction if the cost is questionable or would result in a deduction.

(5) Maximum Deduction Limit Adjustment: The maximum deduction limit for excess shelter expenses will be revised as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as follows: effective January 1, 1997 through September 30, 1998, the deduction will be \$250; from October 1, 1998 through September 30, 2000 the deduction will be \$275; and effective from October 1, 2000 the deduction will be \$300; and will remain so indefinitely.

(6) Utility Expenses:

(a) Actual: Allowable expenses include the cost of heating and cooking fuel; cooling expenses; electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. A one-time deposit is not allowed as a utility expense. Expenses billed to a landlord or housing unit, but separately identifiable from the rent as an expense to the household, are

allowable expenses.

(b) Standard Utility Allowance (SUA):

(i) Definition: The SUA is a single standard which is used in computing the excess shelter expenses of households incurring heating or cooling costs separate and apart from shelter expenses. Expenses included in the SUA are the costs of heating and cooling the home; cooking fuel; electricity (apart from heating or cooling); the basic fee for one telephone; water; sewerage; and garbage and trash collection. A cooling cost is one which is related to the operation of air conditioning systems or room air conditioners, including evaporative coolers, but not fans.

(ii) Eligibility: Only households incurring separate expenses for heating or cooling the home ~~will~~ shall be eligible for the SUA. If a household has a heating expense during the winter, but does not have a cooling expense in the summer, the household continues to be eligible for the SUA year round.

(iii) Households Receiving Energy Assistance Payments:

The SUA ~~will~~ shall be made available to households receiving a payment, or on behalf of which a payment is made, under the Low Income Home Energy Assistance Act of 1981 (LIHEAA). The SUA cannot be reduced due to the provision (directly or indirectly) of assistance under the Low Income Home Energy Assistance Act of 1981. Assistance provided under the LIHEAA shall be considered to be prorated over the entire heating or cooling season for which the assistance was provided.

(iv) The SUA ~~will~~ shall be made available to households receiving a payment or on behalf of which a payment is made under any other similar energy assistance program if the household still incurs out-of-pocket heating or cooling expenses in excess of any assistance paid on behalf of the household to an energy provider.

(c) Household Choice: Households eligible for the SUA may choose to use either the SUA or actual utility expenses. A household ~~will~~ shall be advised that it may switch between the SUA and actual costs only at recertification.

(d) No Heating/Cooling Expense: A household that does not incur a heating or cooling expense separate and apart from its shelter expense, shall not be entitled to claim the SUA.

(i) A household billed separately only for telephone, water, sewerage, and/or garbage collection fees is not eligible to claim the SUA.

(ii) A household incurring electricity or fuel expenses that do not include expenses for heating or cooling

the home is not eligible for the SUA.

(iii) A household that lives in a public housing unit or other rental housing unit that has central utility meters, and is billed only for excess or proportionate heating or cooling costs, is not eligible for the SUA. A household incurring a surcharge for extra refrigerators, TVs, washer, and dryer, etc. is not eligible for the SUA deduction.

(iv) A household that is not eligible for the SUA may claim actual utility expenses that are paid separately from shelter costs.

(e) Shared utility expenses: A household that shares a residence, and heating/cooling expenses with others, shall have the SUA prorated by the number of individuals or households sharing the heating/cooling expenses, whether or not the other individuals or households participate in the Food Stamp Program. If the caseworker is unable to determine the number of groups, and therefore is unable to determine the pro rata share, the household is not eligible for the SUA. Actual expenses paid by the participating household(s) shall be used. Under no circumstances may the total amount of utility expenses used to determine the amount of the deduction exceed the total amount of actual utility costs for the residence.

G. Child Support Deduction: A deduction ~~will~~ shall be allowed for child support payments paid by a household member to or for a non-household member, provided that the household member has a legal obligation to pay child support and such payments are being made.

(1) Legal Obligation and Verification: The household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays ~~will~~ shall be verified. Any document that verifies the household's legal obligation to pay child support, such as a court or administrative order, or legally enforceable separation agreement ~~will~~ shall be acceptable verification. Documents that are accepted as verification of the household's legal obligation to pay child support ~~will~~ shall not be accepted as verification of the household's actual monthly child support payments. Actual payment of child support ~~will~~ shall be verified by documentation including, but not limited to, cancelled checks, wage withholding statements, verification of withholding from unemployment compensation, and statements from the custodial parent regarding direct payments or third party payments the non-custodial parent pays or expects to pay on behalf of the custodial parent. The Department ~~will~~ shall be responsible for obtaining verification of the household's child support payments if the

payments are made to the Child Support Enforcement Division.

(2) Determining the Deduction Amount:

(a) Household with at least three months of payment history: Average the last three month period, taking into account any anticipated changes in the legal obligation. This average is the child support deduction amount. In the event that the client has at least a three month payment history and the payment includes arrearages, the amount paid toward arrearages ~~will~~ shall be used in the average.

(b) Household with less than three months of payment history: The Department ~~will~~ shall estimate the anticipated payments according to the obligation and discussion with the client. This anticipation ~~will~~ shall not include payments toward arrearages.

H. Non deductible Expenses:

(1) Excluded Reimbursement/Vendor Payments:

(a) That portion of any allowable expense that is reimbursed to the household or that is paid through a vendor payment to a third party is not allowable as a deduction.

(b) Actual utility expense deductions or the SUA, as appropriate, ~~will~~ shall be allowed for households receiving payments from LIHEAP, or receiving energy assistance payments under a program other than LIHEAP, as long as the household continues to incur out-of-pocket expenses for home heating or cooling.

(c) A reimbursement paid by HUD or FmHA to a household, or indirectly to a utility provider, is not allowed as a deductible expense.

(d) A household receiving HUD or FmHA utility reimbursements ~~will~~ shall be entitled to the SUA if it incurs heating or cooling costs exceeding the amount of excluded utility reimbursements.

(2) Household Member Provides Service:

(a) When one household member pays another household member to provide a product or service, the money that is exchanged is neither an expense for one nor income for the other household member. Expenses are deductible only when a product or service is provided by someone outside the household and the household makes a money payment for the product or service.

(b) Similarly, income is not counted for one household member who is paid by another household member to obtain wood for home heating. The actual cost of the wood is allowed as a utility expense if an outside money payment is made. Money exchanged between house-

hold members is not considered income to the individual receiving the money and is not an expense to the member paying it.

(3) Past Due Shelter

Expenses: Payment on delinquent rent, mortgage, property taxes or utilities are not allowed as deductible expenses even if not previously billed.

[02/01/95, 12/17/96, 07/01/97; 8.139.520.11 NMAC - Rn, 8 NMAC 3.FSP.525.8, 05/15/2001; A, 02/14/2002]

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection P of 15.2.1.7 NMAC to provide a new definition for private barns owned or leased by a trainer to be used for racing and having direct access to a licensed New Mexico racetrack, renumber subsequent paragraphs and correct a technical error in new paragraph 18.

15.2.1.7 DEFINITIONS: P. DEFINITIONS BEGINNING WITH THE LETTER "P":

(12) "Private Barn is a barn and real property owned or leased by a trainer in which stalls are provided for races at a licensed New Mexico racetrack and who have direct access to a New Mexico racetrack.

(13) "Profit" is the net pool after deduction of the amount bet on the winners.

(14) "Profit Split" is a division of profit amongst separate winning betting interests or winning betting combinations resulting in two (2) or more payout prices.

(15) "Prohibited Substance" is any chemical which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability, such as narcotics, anesthetics, depressants, anti-convulsants, tranquilizers, hallucinogenics and stimulants; when administered to a horse, may interfere with testing procedures and is not a therapeutic medication.

(16) "Program" is the published listing of all contests and contestants for a specific performance.

(17) "Protest" is a written complaint alleging that a horse is or was ineligible to race.

(18) "Purse" is the total cash amount for which a race is contested whether paid at the time of the race or at a future date.

NEW MEXICO RACING COMMISSION

This is an amendment to Paragraph (2) of

Subsection A of 16.47.1.8 NMAC to provide a license fee of \$80.00 for private barns used for racing purposes at a licensed New Mexico racetrack; an amendment to Paragraph (4) of Subsection A of 16.47.1.8 NMAC requiring applicants for groom, exercise and pony persons to submit to a drug (controlled substances) and alcohol screening test when making application for a license; an amendment to Subsection F of 16.47.1.9 NMAC allowing owners or lessees of private barn/stables adjacent to a New Mexico racing facility governed by the Commission to having direct access to the facility provided they consent to the jurisdiction of the Commission and agree, in writing, to comply with the rules of the Commission; and an amendment to Subsection A of 16.47.1.17 NMAC requiring associations to provide a drug (controlled substances) and alcohol screening test for all applicants for groom, exercise and pony persons when making application for license.

16.47.1.8 GENERAL PROVISIONS

A. LICENSES REQUIRED: A person as defined by Subsection P, Paragraph (7) of 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the Commission, or be employed by an Association who is a gaming operator, without a valid license issued by the Commission.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Table listing various roles and their associated fees: Announcer (\$55.00), Assistant General Manager (\$80.00), Assistant Racing Secretary (\$15.00), Association (\$80.00), Auditor, Official (\$55.00), Casino Employee (\$5.00), Clerk of Scales (\$15.00), Clocker (\$15.00), Club, Racetrack (\$80.00), Concession Employee (\$5.00), Concession Operator (\$80.00), Custodian of Jockey Room (\$15.00), Director or Corporate Officer (\$80.00), Director of Operations (\$55.00), Director of Racing (\$55.00), Exercise Person (\$15.00), General Manager (\$80.00), Groom (\$5.00), Horseman's Bookkeeper (\$15.00), Identifier (Horse) (\$15.00), Janitor (\$5.00), Jockey (3 year) (\$100.00), Jockey (1 year) (\$80.00).

Table listing various roles and their associated fees: Jockey (Apprentice) (3 year) \$100.00, Jockey Apprentice (1 year) \$80.00, Jockey Agent \$55.00, Jockey Valet \$5.00, Laborer \$5.00, Official Personnel (specify position) \$5.00, Official Veterinarian (3 year) \$100.00, Official Veterinarian (1 year) \$80.00, Outrider \$15.00, Owner (3 year) \$100.00, Owner (1 year) \$80.00, Paddock Judge \$15.00, Pari Mutuel Employee \$5.00, Pari Mutuel Manager \$55.00, Placing Judge \$15.00, Photo Employee \$5.00, Plater \$80.00, Pony Person \$5.00, Private Barns \$80.00, Racing Secretary-Handicapper \$55.00, Security Chief \$55.00, Security Staff \$5.00, Simulcast Company Employee \$5.00, Simulcast Coordinator \$55.00, Simulcast Operator \$80.00, Special Event, 1 or 2 day \$100.00, Stable Name (3 year) \$100.00, Stable Name (1 year) \$80.00, Stable Superintendent \$55.00, Starter \$55.00, Starter Assistant \$15.00, Ticket Seller (Admissions) \$5.00, Timer \$15.00, Totalisator Employee \$5.00, Totalisator Operator \$80.00, Track Maintenance, Employee \$5.00, Track Physician \$80.00, Track Superintendent \$55.00, Trainer (3 year) \$100.00, Trainer (1 year) \$80.00, Trainer Assistant \$15.00, Veterinarian Assistant \$15.00, Veterinarian, Practicing (3 year) \$100.00, Veterinarian, Practicing (1 year) \$80.00, Veterinarian, Racing (3 year) \$100.00, Veterinarian, Racing (1 year) \$80.00, Watchman \$5.00.

(4) License applicants for groom, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

16.47.1.9 OWNERS

E. PRIVATE BARN/STABLES: An owner or lessee of a private barn/stable adjacent to or within a reasonable distance of a New Mexico racing facility governed by the Commission may by consent have direct

access to that racetrack provided they consent to the jurisdiction of the Commission and agree, in writing to comply with all rules and regulations of the Commission. Direct access simply means they may enter the licensed racetrack without having to go through the general public gate or the horsemen's gate, but they may do so only after consenting in writing to jurisdiction of and complying with the Commission and its rules and regulations.

16.47.1.17 TESTING PROCEDURES

A. GENERAL:

(5) An association will provide a drug (controlled substances) and alcohol-screening test for all applicants for groom, exercise and pony persons when making application for license. The cost for the drug-screening test will be borne by the applicant payable to the association at a reasonable cost approved by the Commission.

NEW MEXICO RETIREE HEALTH CARE AUTHORITY

**TITLE 2 PUBLIC FINANCE
CHAPTER 81 RETIREE HEALTH CARE FUNDS
PART 11 ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF YEARS OF CREDITABLE SERVICE**

2.81.11.1 ISSUING AUTHORITY: New Mexico Retiree HealthCare Authority ("NMRHCA")
[2.81.11.1 NMAC - N, 02-14-02]

2.81.11.2 SCOPE: This rule applies to eligible retirees of NMRHCA-participating employers who become eligible on or after July 1, 2001, and to the dependents of such retirees.
[2.81.11.2 NMAC - N, 2-14-02]

2.81.11.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the Retiree Health Care Act ("Act"), Sections 10-7C-1 et seq. NMSA 1978, as amended.
[2.81.11.3 NMAC - N, 02-14-02]

2.81.11.4 DURATION: Permanent.
[2.81.11.4 NMAC - N, 02-14-02]

2.81.11.5 EFFECTIVE DATE: February 14, 2002 unless a later date is cited at the end of a section.
[2.81.11.5 NMAC - N, 02-14-02]

2.81.11.6 OBJECTIVE: The

objective of this rule is to establish subsidy levels commensurate with a retiree's years of credited service with a participating employer for employees who become eligible for enrollment into the NMRHCA health care program on or after July 1, 2001, and their dependents.
[2.81.11.6 NMAC - N, 02-14-02]

2.81.11.7 DEFINITIONS:

A. "Retiree Health Care Authority" or "Authority" or "NMRHCA" means, the Retiree Health Care Authority established by chapter 6 laws of New Mexico, 1990 [Sections 10-7C-1 et seq. NMSA 1978].

B. "Board" means, the board of directors of the NMRCHA.

C. "Subsidy" means a set portion of the cost of an eligible retiree's monthly coverage, a varying percentage of which is borne by the authority as determined by the board.

D. "Credited service" means the number of full years of state employment reflected in a retiree's earned service credit as calculated by the appropriate state retirement agency.

E. "Disabled retiree" means an eligible retiree who has been authorized to retire due to disability by the appropriate state retirement agency.

F. "State retirement agency" means each of the agencies created and authorized by law to administer the educational retirement act, the public employees retirement act, the judicial retirement act, the magistrate retirement act, the public employees retirement reciprocity act, or the retirement program of an independent public employer on or before July 1, 1990.
[2.81.11.7 NMAC - N, 02-14-02]

2.81.11.8 NMRHCA CONTRIBUTION OF A PERCENTAGE OF A SUBSIDY TO MONTHLY PREMIUMS OF ELIGIBLE RETIREES: Except as otherwise provided herein, for eligible retirees who become eligible for participation on or after July 1, 2001, and the eligible dependents of such retirees, the NMRCHA will contribute the following percentages of the subsidy to the monthly premiums according to the corresponding numbers of years of credited service with an NMRHCA-participating employer:

A. Example: If the subsidy for a particular plan is one half the premium cost, then for a retiree with 20 years of credited service the NMRHCA would provide 100 percent of the subsidy; half the cost.

B. Example: For the same subsidy of one half the premium cost, the percent of subsidy for a retiree with eight years of credited service would be 25 per-

cent of the 50 percent subsidy: 12.5 percent of the cost.

Years of credited service	Percentage of subsidy
5	6.52
6	12.50
7	18.75
8	25.00
9	31.25
10	37.50
11	43.75
12	50.00
13	56.25
14	62.50
15	68.75
16	75.00
17	81.50
18	87.50
19	93.75
20	100.00

[2.81.11.8 NMAC - N, 02-14-02]

2.81.11.9 SUBSIDIES FOR DISABLED RETIREES:

Notwithstanding any other provision of this rule, the subsidy paid by the NMRHCA for a disabled retiree with at least five full years of credited service, and to the dependents of such a retiree, shall be at the 100 percent level, corresponding to the 20 year level set forth in Section 2.81.11.8 NMAC.

[2.81.11.9 NMAC - N, 02-14-02]

HISTORY OF 2.81.11 NMAC: [RESERVED]

End of Adopted Rules and Regulations Section

2002
SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

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