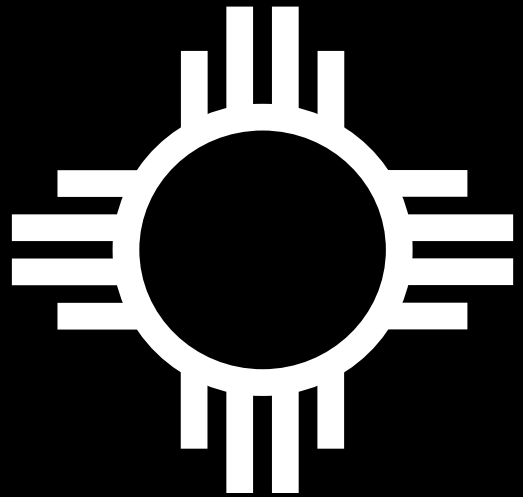


**NEW
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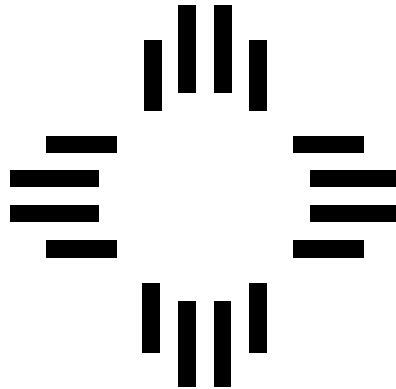


Volume XIV
Issue Number 16
August 29, 2003

New Mexico Register

Volume XIV, Issue Number 16

August 29, 2003



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

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2003

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New Mexico Register

Volume XIV, Number 16

August 29, 2003

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

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On September 17, 2003, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold two public hearings in the City Council/County Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearings will address:

*Proposal to amend 20.11.100 NMAC, Motor Vehicle Inspection - Decentralized.

*Proposal to place amended 20.11.100 NMAC, Motor Vehicle Inspection - Decentralized into the SIP.

These hearings were rescheduled from August 13, 2003. The purpose of the first hearing is to receive testimony on proposed changes to the Motor Vehicle Inspection - Decentralized regulation. The proposed effective date is January 1, 2004. The proposed regulation changes include:

*The phase in of BAR97 OBDII analyzers certified to meet program specifications with all testing to be done using said analyzers by July 1, 2004.

*The incorporation of a pressurized gas cap test to reduce hydrocarbon emissions.

*The reduction of cutpoints or maximum allowable levels of hydrocarbon emissions.

*The discontinuation of the visible tamper check for oxygen sensors.

*The discontinuation or limited applicability of the visible tamper check for air injection.

*The exemption of new vehicles for up to four years (two registration cycles).

*The exemption of dedicated alternative fuel and electric hybrid vehicles from testing.

*The exemption of motor homes and other vehicles over 10,000 lbs GVW.

*A requirement that diesel vehicles be tested at change of ownership.

*A requirement that vehicles defined as 'gross polluters' be repaired to reduce emissions below that threshold prior to being granted a waiver or time extension.

*The limitation of time extension for repair to one year (one time per vehicle).

*A requirement that vehicles in model years with inspection failure rates exceeding 25% (currently 1975 – 1985) be tested annually or at each registration renewal.

*A requirement that vehicles defined as marginal passes be issued a certificate valid only for a one-year registration.

*A requirement that vehicles commuting into the program area 60 or more days per year comply with the biennial test requirement.

*The allowance for 'Test by appointment only' stations.

*A revision or replacement of the violation point system for Air Care inspectors.

Immediately after the Part 100 hearing closes, a second hearing will be held during which the Board will be asked to place the newly adopted regulation into the SIP. Following these two hearings, the Board will hold its regular monthly meeting during which the Board is expected to consider approval of the proposed regulation amendments and incorporating the newly amended regulation into the SIP.

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

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

Anyone intending to present technical testimony is asked to submit a written notice of intent to: Attn: September Hearing Record, Mr. Glen L. Dennis, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person at 1500 Broadway NE, in advance of the hearing. The notice of intent shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on September 10, 2003. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to gdennis@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGU- LAR MEETING

On **October 8, 2003, at 3:00 PM**, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will begin a series of five public hearings in the City Council/County Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearings will address:

1. Proposal to submit a "Section

309" Regional Haze element for inclusion into the New Mexico State Implementation Plan (SIP) for air quality. "Section 309" of the federal Regional haze regulation is the provision that pertains to certain Western states, including New Mexico

2. Proposal to amend the Open Burning regulation, 20.11.21 NMAC (New Mexico Administrative Code), to incorporate requirements of the federal Regional Haze Regulation concerning smoke management

3. Proposal to incorporate an amended 20.11.21 NMAC into the New Mexico SIP for air quality, superceding Regulation 3

4. Proposal to amend the Permit Fees regulation, 20.11.2 NMAC, to change the fee structure for 20.11.20 NMAC, Fugitive Dust Control

5. Proposal to incorporate amended 20.11.2 NMAC, Permit Fees into the SIP

The purpose of the first hearing is to receive testimony on proposed submission of a Regional Haze element for inclusion into the SIP. The Regional Haze SIP is a federal mandate to develop strategies to improve visibility in Class I areas to natural visibility conditions by the year 2064. Class I areas are those designated as areas of special national or regional value from a natural, scenic, recreational, and/or historic perspective. These areas are the focus of federal visibility protection regulations, including the Regional Haze regulation. Across the country, Class I areas include such places as the Grand Canyon, Yosemite, Mt. Rainier, and Yellowstone. Of the 156 mandatory federal Class I areas in the US, nine Class I areas are in New Mexico, including Carlsbad Caverns National Park, Bandelier National Monument, Bosque del Apache National Wildlife Refuge, the Gila Wilderness Area, and the San Pedro Parks Wilderness Area.

The purpose of the second hearing is to receive testimony on proposed amendments to the Open Burning regulation to comply with federal smoke management mandates for prescribed burning, agricultural burning, and wildfires as required by the Regional Haze regulation.

Immediately after the Open Burning hearing closes, a third hearing will be held during which the Board will be asked to place the amended Open Burning regulation into the SIP if the Board adopts amendments to Open Burning.

The purpose of the fourth hearing is to receive testimony on proposed changes to the Permit Fees regulation, 20.11.2 NMAC, including a new fee structure for the recently adopted regulation, Fugitive Dust Control, 20.11.20 NMAC. This hearing was rescheduled from September 10, 2003.

Immediately after the Permit Fees hearing closes, the final hearing will be held during which the Board will be asked to place the amended Permit Fees regulation into the SIP if the Board adopts amendments to Permit Fees.

After these hearings, the Board is expected to hold its regular monthly meeting during which the Board is expected to consider whether to approve the submission of a "Section 309" Regional Haze SIP, whether to adopt the proposed amendments to Open Burning, and whether to incorporate this amended regulation into the SIP, whether to adopt the proposed amendments to Permit Fees, and whether to incorporate an amended Permit Fees regulation into the SIP

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

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

Anyone intending to present technical testimony at any of the hearings is asked to submit a written notice of intent to: Attn: October Hearing Record, Mr. Dan Warren, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, in advance of the hearing, you may deliver your notice of intent to testify to Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the name, address, and affiliation of the person testifying.

In addition, written comments to be incorporated into the public record should be

received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on October 1, 2003. These comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to dwarren@cabq.gov but must still include the required name and address information, and be submitted before 5:00 pm on October 1, 2003. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, 400 Marquette Avenue NW, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

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

**NEW MEXICO
CHILDREN, YOUTH AND FAMILIES
DEPARTMENT
NOTICE OF PUBLIC HEARING**

The Family Services Division of the New Mexico Children, Youth and Families Department will hold a formal public hearing on Thursday, October 2, 2003 beginning at 10:00a.m., 1120 Paseo de Peralta, (PERA Building), Apodaca Hall, (2nd floor), Santa Fe, New Mexico 87502, to consider changes to 8.8.3 NMAC General Provisions Governing Criminal Records Checks and Employment History Verification. This Provision has general applicability to operators, staff and employees, and prospective operators, staff and employees of child-care facilities, including every facility or program having primary custody of children for twenty hours or more per week, juvenile detention, correction or treatment facilities, and direct providers of care for children in the following settings: Children's Behavioral Health Services and licensed and registered child care, including shelter care.

The proposed provisions may be reviewed, or a copy obtained during the regular business hours of the Family Services Division,

P. O. Drawer 5160, 1120 Paseo de Peralta, PERA Building, Room 205, Santa Fe, New Mexico 87504.

Interested persons may testify at the hearing or submit written comments at the above address no later than 5:00 p.m., October 2, 2003. Written comments will be given the same consideration as oral testimony given at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the Children, Youth and Families Department, Family Services Division at 1-800-610-7610, or 827-7659. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED

REVISIONS TO 20.2.75 NMAC (Construction Permit Fees)

The New Mexico Environmental Improvement Board will hold a public hearing on October 27, 2003 at 9:30 a.m. at the Piñon Building, Porter Hall (first floor), 1220 S. St. Francis Drive, Santa Fe, New Mexico, to consider revisions to 20.2.75 NMAC (Construction Permit Fees). If necessary, the hearing will continue on October 28 at the same location.

The proponent of this regulatory change is the New Mexico Environment Department.

Proposed Revisions to 20.2.75 NMAC (Construction Permit Fees)

The proposed revisions would allow the Department to recoup the reasonable cost of the construction permitting program as required by the Air Quality Control Act. Currently the Department recoups less than half of the cost of the construction permitting program through fees to sources that require construction permits.

The Department proposes three options for recovering program costs through the construction permit fee schedule. Option A raises the annual fee from \$220 to \$1,500.

Option B raises the annual fee from \$220 to \$1,000 and the dollar-per-point value in the complexity-based schedule from \$315 to \$500. Option C raises the dollar-per-point value from \$315 to \$600 in the complexity-based schedule. All three options include a flat fee of \$500 for processing notices of intent under 20.2.73 NMAC, one point in the complexity-based schedule for processing portable source relocations, and an annual adjustment that tracks the Consumer Price Index.

The Department also is proposing a typographical revision to Section 7 of 20.2.75 NMAC to replace an incorrect reference to Section 110, which was renumbered as Section 11 in a previous revision to this regulation.

The proposed revisions may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room S-2054, Santa Fe, NM. Copies of the proposed revisions may be obtained by contacting Rita Trujillo at (505) 955-8024 or by visiting the Department's web site at www.nmenv.state.nm.us. Follow the links to the Air Quality Bureau's page. Questions about the proposed revisions may be addressed to: Rita Trujillo, Manager, Control Strategies Section, Air Quality Bureau, 2044 Galisteo Street, Santa Fe, NM, 87505, telephone number (505) 955-8024. Questions and comments about the proposed revisions should be submitted to Ms. Trujillo by October 10, 2003, in order to be considered by the Department prior to the hearing.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 74-2-6 NMSA 1978, and other applicable procedures.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person for whom the witness(es) will testify;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- summarize or include a copy of the direct testimony of each technical witness and

state the anticipated duration;

- include the text of any recommended modifications to the proposed regulatory change; and
- list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board no later than 5:00 pm on October 17, 2003, and should reference the name of the regulation and the date of the hearing. Notices of intent to present technical testimony shall be submitted to:

Geraldine Madrid-Chavez
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Drive, Room N-2150
Santa Fe, NM 87502

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by September 26, 2003 at (505) 827-2844 or by mail at Cliff Hawley, Chief of the Program Support Bureau, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM, 87502. TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333. Outside of Albuquerque: 1-800-659-1779.

Copies of the agenda and the proposed revisions will be provided in alternative forms, e.g. audiotape, if requested by September 26, 2003.

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

ss/Gay Dillingham, Chair

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF AIR QUALITY PUBLIC HEARINGS

The New Mexico Environmental Improvement Board will hold consecutive public hearings on November 17, 18 and 19, 2003 at 9:30 a.m. at the New Mexico State Capitol Building, Room 321, Santa Fe, New Mexico, to consider revisions to New Mexico's State Implementation Plan to incorporate federal regional haze requirements, including adopting 20.2.65 NMAC (Smoke Management) and 20.2.81 NMAC (Western Backstop Sulfur Dioxide Trading Program), and revising 20.2.73 NMAC (Notice of Intent and Emission Inventory Requirements). In addition, the Board will consider whether to repeal and replace 20.2.60 NMAC (Open Burning).

The proponent of these state implementation plan revisions and regulatory changes is the New Mexico Environment Department.

Proposed Revisions to New Mexico's State Implementation Plan to Incorporate Regional Haze

The proposed revisions would allow the Department to comply with the federal Clean Air Act and the associated EPA requirements under 40 CFR § 51.309 (Section 309). Section 309 of the federal Regional Haze Rule incorporates the recommendations of the Grand Canyon Visibility Transport Commission (GCVTC), including strategies for combating regional haze such as reducing smoke, preventing air pollution through energy efficiency, reducing dust from dirt roads, reducing air pollution from industrial sources, reducing pollution from vehicles (mobile sources), and other measures to reduce haze-producing air pollution.

The revision to the State Implementation Plan (SIP) follows the requirements of Section 309 of the Regional Haze Rule and incorporates the work products of both the GCVTC and its successor agency, the Western Regional Air Partnership (WRAP). New Mexico was a member of the GCVTC and is a continuing member of the WRAP. New Mexico's Section 309 Regional Haze SIP must be submitted to EPA by December 31, 2003.

In addition to the proposed Regional Haze SIP, two proposed new regulations and one proposed revised regulation will be part of this rulemaking. These regulations include requirements pertaining to the Regional Haze SIP. The regulations are 20.2.65 NMAC – *Smoke Management* (Part 65), 20.2.81 NMAC – *Western Backstop Sulfur Dioxide Trading Program* (Part 81), and 20.2.73 NMAC – *Notice of Intent and Emission Inventory Requirements* (Part 73).

Part 65 contains the requirements for vegetation burning above the de minimus levels regulated in *Open Burning* (20.2.60 NMAC). This regulation applies to persons who burn above these de minimus levels in New Mexico, including farmers, ranchers, orchardists, federal land managers, and others.

Part 81 contains the requirements that would apply to major (100 tons or more per year) industrial sources of sulfur dioxide as a backstop regulatory program if the sulfur dioxide milestones are exceeded. Section 309 of the Regional Haze Rule establishes the mandatory requirements that must be met by New Mexico's implementation plan, including regional sulfur dioxide milestones, sulfur dioxide emissions tracking requirements and a backstop regional cap-and-trade program for sulfur dioxide. Part 81 may never be implemented if the goal to meet the regional sulfur dioxide milestones through voluntary means is achieved. If the rule is implemented, Part 81 establishes the procedures and compliance requirements for sources in the trading program.

The Regional Haze Rule includes emissions inventory requirements for tracking compliance with the sulfur dioxide milestones. In response, the Department has developed revisions to New Mexico's current inventory requirements regulation (20.2.73 NMAC), to establish enforceable provisions and track SO₂ emissions. The proposed revisions to Part 73 add specific language to address the pre-trigger emissions tracking requirements in the sulfur dioxide milestone and backstop trading program.

Proposed Replacement of 20.2.60 NMAC (Open Burning)

The Department is also proposing revisions to 20.2.60 NMAC – *Open Burning* (Part 60). Because of the extensive nature of the revisions, the Department is requesting that the Environmental Improvement Board repeal the existing regulation and replace it with a new regulation. The Department is requesting this hearing in conjunction with the Smoke Management regulation hearing because of the continuum between the two proposed regulations. The current Open Burning regulation has not been significantly revised since it was promulgated in 1970.

The proposed Part 60 would replace the current system of open burning pursuant to Department-issued permits containing individualized conditions with open burning without permit pursuant to a uniform rule. A proposed new section of Part 60 would apply to small-scale burning of vegetative materials that is de minimus in the context

of the proposed Smoke Management regulation (20.2.65 NMAC). The Part 60 section would set uniform conditions for burning less than specified amounts of vegetation per day, and would apply to all such burning regardless of land use or purpose of burning.

Also proposed is a prohibition on burning of household waste (other than vegetative materials), to take effect June 1, 2004. The Department proposes new rule language to provide more clarity on the conditions under which household waste may be burned during the interim period before the prohibition takes effect.

The proposed revisions may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room S-2054, Santa Fe, NM. Copies of the proposed revisions may be obtained by contacting Rita Trujillo at (505) 955-8024 or by visiting the Department's web site at www.nmenv.state.nm.us. Follow the links to the Air Quality Bureau's page and then to proposed regulations. Questions about the proposed revisions may be addressed to: Rita Trujillo, Manager, Control Strategies Section, Air Quality Bureau, 2044 Galisteo Street, Santa Fe, NM, 87505, telephone number (505) 955-8024. Questions and comments about the proposed revisions should be submitted to Ms. Trujillo by October 31, 2003, in order to be considered by the Department prior to the hearing.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and the Air Quality Control Act, Section 74-2-6, NMSA 1978.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person for whom the witness(es) will testify;
- identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration;
- include the text of any recommended mod-

ifications to the proposed regulatory change; and
- list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on November 7, 2003, and should reference the name of the regulation(s) and the date(s) of the hearing(s). Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid-Chavez
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Drive, Room N-2150
Santa Fe, NM 87502

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by October 17, 2003 at (505) 827-2844 or by mail at Cliff Hawley, Chief of the Program Support Bureau, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM, 87502. TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333. Outside of Albuquerque: 1-800-659-1779.

Copies of the agenda and the proposed revisions will be provided in alternative forms, e.g. audiotape, if requested by October 17, 2003.

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

ss/Gay Dillingham, Chair

**NEW MEXICO OIL
CONSERVATION
COMMISSION**

NOTICE OF RULE MAKING

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing concerning the following: adoption of a new rule regarding pits and below-grade tanks (to be codified as 19.15.2 NMAC); amendment of 19.15.1.7 NMAC and 19.15.5.313 NMAC; rescission of 19.15.1.18 NMAC, 19.15.3.105 NMAC, and 19.15.2.1 through 19.15.2.15 NMAC; and rescission of Orders R-3221, R-3221-A, R-03221-B, R-3221-B-1, R-3221-C, R-3221-D; R-7940, R-7940-A, R-7940-B, R-7940-B(1) and R-7940-C. The hearing will be conducted in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing will commence at 9:00 A.M. on September 11, 2003 and continue, as necessary, through September 12, 2003. The proposed rule and amendments regulate the construction, operation and closing of pits and below-grade tanks in the interest of protection of ground and surface water and public health, safety and the environment, and replace existing rules and orders on those subjects. These changes will have state-wide application. 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, please contact Division Administrator Florene Davidson at 505-476-3458 or through the New Mexico Relay Network (1-800-659-1779) immediately. Copies of the text of the proposed rule and amendments are available from Ms. Davidson at 505-476-3458 or from the Division's Internet web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm> Written comments and suggested amendments to, or substitutions for, the proposed rules must be received by Division Administrator Florene Davidson no later than 5:00 P.M. on Monday, September 8, 2003. Written comments, amendments and substitutions may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 18th day of August, 2003.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Lori Wrotenbery, Director

S E A L

**NEW MEXICO OIL
CONSERVATION
COMMISSION**

NOTICE OF RULE MAKING

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on October 16, 2003 in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico concerning the adoption of amendments to 19.15.14.1201, 19.15.14.1202, 19.15.14.1204 through 19.15.14.1209 and 19.15.14.1221 NMAC. The proposed amendments will change the manner of publication of notices, and the contents of notices, of hearings to be held before the Oil Conservation Commission and before Oil Conservation Division hearing examiners, provide for a shortened notice period in case of emergency, change the time for filing of pre-hearing statements and specify the parties entitled to be furnished copies of Division and Commission orders. Additionally, the amendments will modify provisions of 19.15.14.1207.A(1)(b) NMAC, which provides for an expedited procedure for compulsory pooling applications. 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, please contact Florene Davidson at 505-476-3458 or through the New Mexico Relay Network, 1-800-659-1779 immediately. Copies of the text of the referenced rules and proposed amendments are available from Ms. Davidson at 505-476-3458 or from the Division's Internet web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm>

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 18th day of August, 2003.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Lori Wrotenbery, Director

S E A L

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The Department proposes to adopt the following regulations:

3.2.212.21 NMAC Section 7-9-54 NMSA 1978

(Government Credit or Procurement Card Purchases) Gross Receipts and Compensating Tax Act

3.3.5.1 through 15 NMAC Section 7-3A-1 through 9 NMSA 1978

(Oil and Gas Proceeds Withholding) Oil and Gas Proceeds Withholding Tax Act

3.3.20.9 NMAC Section 7-2-20 NMSA 1978

(Information Returns; Oil and Gas Withholding) Income Tax Act

The proposed regulations were placed on file in the Office of the Secretary on August 15, 2003. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final regulations, if filed, will be filed as required by law on or about October 15, 2003.

A public hearing will be held on the proposed regulations on Monday, September 29, 2003, at 9:30 a.m. in the Secretary's Conference Room No. 3004/3138 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposed regulations are available upon request; contact (505) 827-0908. Comments on the proposed regulations are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposed regulations should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before September 29, 2003.

3.2.212.21 **GOVERNMENT
CREDIT OR PROCUREMENT CARD
PURCHASES:**

A. Receipts from sales of tangible personal property to an agency of the United States Government or the state of New Mexico are deductible from the gross receipts of the seller when paid for by a credit or procurement card issued to the

United States government or the state of New Mexico. Through November 29, 1998, credit or procurement cards bearing the legends "U S GOVT TAX EXEMPT" and "I.M.P.A.C." are such credit or procurement cards issued to the United States government. On and after November 30, 1998, credit or procurement cards bearing the [~~legend~~] legends "United States of America" and "Tax Exempt I.D. 140001849" are such credit or procurement cards issued to the United States Government. On or after June 30, 2003, credit or procurement cards bearing the legend "State of New Mexico" and the state seal are such credit or procurement cards issued to the state of New Mexico.

B. Receipts from [~~any~~] credit or procurement card sales of construction materials or services or receipts from credit or procurement card payments of leases of tangible property are not deductible. Receipts from credit or procurement card sales to employees or representatives of the federal government or the state of New Mexico using a credit or procurement card [~~not~~] other than a card issued to the United States government or the state of New Mexico are not deductible from gross receipts under Section 7-9-54 NMSA 1978.

**TITLE 3: TAXATION
CHAPTER 3: P E R S O N A L
INCOME TAXES
PART 5: OIL AND GAS PRO-
CEEDS WITHHOLDING**

3.3.5.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.3.5.1 NMAC – N, XXX]

3.3.5.2 **SCOPE:** This part applies to all remitters of oil and gas proceeds from New Mexico wells.
[3.3.5.2 NMAC – N, XXX]

3.3.5.3 **S T A T U T O R Y
AUTHORITY:** Section 9-11-6.2 NMSA 1978.
[3.3.5.3 NMAC – N, XXX]

3.3.5.4 **D U R A T I O N :** Permanent.
[3.3.5.4 NMAC – N, XXX]

3.3.5.5 **EFFECTIVE DATE:** 10/1/03, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.3.5.5 NMAC – N, XXX]

3.3.5.6 **OBJECTIVE:** The objective of this part is to interpret, exem-

plify, implement and enforce the provisions of the Oil and Gas Proceeds Withholding Tax Act.

[3.3.5.6 NMAC – N, XXX]

3.3.5.7 **DEFINITIONS:** For the purposes of Section 3.3.5.7 NMAC: "Gross amounts" subject to withholding includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If the amount received by the remitter is less the deduction of severance taxes or other expenses, then gross amount is the amount received by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, non-employee compensation.

[3.3.5.7 NMAC – N, XXX]

3.3.5.8 **EFFECTIVE DATE
OF OIL AND GAS PROCEEDS WITH-
HOLDING REQUIREMENTS:** The withholding requirements imposed by Section 7-3A-3 NMSA 1978 apply to payments made on or after October 1, 2003, regardless of production date.
[3.3.5.8 NMAC – N, XXX]

3.3.5.9 **OIL AND GAS PRO-
CEEDS**

A. The following are not oil and gas proceeds for the purposes of the Oil and Gas Proceeds Withholding Tax Act and are not subject to the withholding tax imposed by that Act, when payment is not offset against a share of future production: advance royalty payments, bonus payments, minimum royalty payments, shut-in payments and rental payments.

B. If the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to "oil and gas production from any well located in New Mexico" may be derived through the allocation methodology set out in the agreement.

[3.3.5.9 NMAC – N, XXX]

3.3.5.10 **WITHHOLDING
RATES:** For periods beginning on or after January 1, 2005, the rate of withholding shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

[3.3.5.10 NMAC – N, XXX]

3.3.5.11 **WITHHOLDING
MINIMUMS:** No withholding is required if the amount withheld from any payment to a remittee is less than ten dollars (\$10.00), but the remitter may withhold from such

payment without creating a right of action by the remittee against the remitter.

[3.3.5.11 NMAC – N, XXX]

3.3.5.12 **REMITTEES WITH A NEW MEXICO ADDRESS:** A remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a remittee with a New Mexico address. The relevant address for purposes of Section 7-3A-3 NMSA 1978 is the remittee address to which federal Form 1099-MISC is mailed, or the address that is shown on federal form W-9 or similar form. If federal law does not require the remitter to mail a federal Form 1099-MISC to the remittee, and the remitter has not received a federal form W-9 or similar form, the relevant address is the address to which the oil and gas proceeds are mailed.

[3.3.5.12 NMAC – N, XXX]

3.3.5.13 **REMITTEES WHO ARE 501(C)(3) ORGANIZATIONS:** A remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a remittee granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended. Acceptable proof that a remittee is a 501(c)(3) organization includes a copy of the remittee's federal Form W-9, or a copy of the determination letter from the Internal Revenue Service granting the remittee 501(c)(3) status.

[3.3.5.13 NMAC – N, XXX]

3.3.5.14 **"REASONABLE CAUSE" FOR NOT WITHHOLDING:** "Reasonable cause" for not withholding includes, but is not limited to:

A. written notification from a remittee that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners;

C. reliance on a New Mexico address supplied by the remittee. The remitter may rely on a New Mexico address supplied by the remittee for up to thirty days after receiving written notice from the remittee of a change in address to an address outside New Mexico; and

D. if the amount received by the remitter has had severance taxes or other expenses deducted prior to the time the remitter receives it, then the remitter shall be required to withhold only from the amount it received.

[3.3.5.14 NMAC – N, XXX]

3.3.5.15 **STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS**

A. Each remitter shall:

(1) provide a federal Form 1099-MISC to each remittee on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the remittee and the state tax withheld;

(2) file an "Annual Summary of Oil and Gas Proceeds Withholding Tax" information return with the department on or before the last day of February of the year following the year for which the statement is made; and

(3) attach to the "Annual Summary of Oil and Gas Proceeds Withholding Tax" information return copies of federal Form 1099-MISC for each remittee of oil and gas proceeds from whom withholding was required. Remitters who submit federal Form 1099-MISC information returns by magnetic media or electronic transfer using the combined federal/state program, with the records coded to be forwarded to New Mexico, are not required to submit paper copies of federal Form 1099-MISC with the annual summary.

B. Remitters who are not required by federal law to file a federal Form 1099-MISC but have a withholding tax obligation pursuant to the Oil and Gas Proceeds Withholding Tax Act must provide New Mexico form RPD-41285 "annual statement of withholding of oil and gas proceeds," a pro forma federal form 1099-MISC, or a form containing equivalent information, to each remittee and file a copy with the department to satisfy the filing requirements of the Oil and Gas Proceeds Withholding Tax Act.

[3.3.5.15 NMAC – N, XXX]

History of 3.3.5 NMAC [Reserved]

3.3.20.9 **INFORMATION RETURNS; OIL AND GAS WITHHOLDING:** For annual statements of withholding and information returns to be filed by remitters of oil and gas proceeds see Sections 3.3.5.7 through 3.3.5.15 NMAC promulgated under Section 7-3A-7 NMSA 1978.

**End of Notices and
Proposed Rules Section**

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Adopted Rules and Regulations

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.1 NMAC, Section 7.

16.30.1.7 DEFINITIONS:

A. "Architect" means an architect legally registered in New Mexico (Subsection A of Section 61-15-2 NMSA 1978).

B. "Architectural services" means services for projects located in New Mexico and shall be performed by a legally registered architect or under the architect's responsible charge (Subsection B of Section 61-15-2 NMSA 1978).

C. "Competence" means:
(1) in the practice of architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by architects of good standing practicing in New Mexico;

(2) an architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience or ability in the specific technical areas involved; and

(3) an architect shall take into account all applicable state and municipal building codes, laws and regulations. An architect may rely on the opinion of others (example: attorneys, engineers, building officials) as to the intent and meaning of the codes, laws and regulations.

D. "Consulting associate architect" means an architect who is acting in an advisory capacity to a registered architect, and whose present position is subordinate to the registered architect. (Subsection A (1) of Section 61-15-8 NMSA 1978).

E. "Felony conviction" means conviction of a felony with a copy of the record of conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence (Subsection B (2) of Section 61-15-12 NMSA 1978).

F. "Gross negligence" means:

(1) being habitually guilty of neglect; or

(2) being found extremely careless and lacking in ordinary care and concern in the practice of architecture (Subsection A (3) of Section 61-15-12 NMSA 1978). Should the board not discipline an architect for a single act of gross negligence, the board does not waive the right to invoke sanctions against the archi-

tect for repeated acts of gross negligence.

G. "Incidental practice of architecture and engineering" means:

(1) architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than four hundred thousand dollars (\$400,000) and having a total occupant load not greater than fifty (50);

(2) engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than four hundred thousand dollars (\$400,000) and having a total occupant load not greater than fifty (50);

(3) all buildings and related structures within the regulatory provisions of the New Mexico Building Code (NMUBC) will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than four hundred thousand dollars (\$400,000) or having a total occupant load greater than fifty (50), with the exception of:

(a) single-family dwellings not more than two (2) stories in height;

(b) multiple dwellings not more than two (2) stories in height containing not more than four (4) dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four (4) dwelling units each to form apartment or condominium complexes where the total exceeds four (4) dwelling units on any lawfully divided lot;

(c) garages or other structures not more than two (2) stories in height which are appurtenant to buildings described in Subparagraphs (a) and (b) of Paragraph (3) of Subsection G of 16.30.1.7 NMAC; or

(d) nonresidential buildings, as defined in the New Mexico Building Code (NMUBC), or additions having a total occupant load of ten (10) or less and not having more than two (2) stories in height, which shall not include E-3 Day Care), H (Hazardous) or I (Institutional) occupancies;

(e) alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

(4) the owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project.

(5) occupant load shall be defined

and determined by the method set forth in the current, adopted code.

H. "Incompetency" means:

(1) being adjudicated mentally incompetent by a court; or

(2) engaging in conduct which evidences a lack of knowledge, ability or fitness to discharge the duty and responsibility owed by the architect to a client and to the public in order to safeguard life, health and property and to promote public welfare (Subsection A (3) of Section 61-15-12 NMSA 1978).

I. "Intern architect" is a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board (Subsection F of Section 61-15-2 NMSA 1978).

J. "Misconduct" means:
(1) knowingly preparing or stamping construction documents in violation of the codes, laws or regulations;

(2) stamping and signing construction documents, specifications, reports or other professional work not prepared under the architect-of record's responsible charge, as defined in Subsection M of 16.30.1.7 NMAC.

(3) engaging in any conduct involving fraud or deceit related to the business or practice of architecture;

(4) making any false statement or giving any false information in connection with an application for registration or for renewal of registration;

(5) being convicted of a crime related to the practice of architecture with a copy of the record of the conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence;

(6) violating federal or state statute or rule that directly relates to the practice of architecture;

(7) being unable to practice architecture with reasonable skill and safety to clients by reason of use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

(8) making any substantial misrepresentation in the course of practice, including but not limited to, false, misleading or deceptive advertising or fraudulent or misleading claims;

(9) using or altering material prepared by another person without the knowledge and consent of that person;

(10) using the professional seal of another person without the knowledge and consent of that person;

(11) engaging in any conduct in conflict with the Code of Conduct for

Architects (16.30.4 NMAC);

(12) engaging in conduct that the architects knows or should know through professional knowledge or experience is not within the acceptable standard for professional conduct that is ordinarily applied by architects of good standing practicing in the state of New Mexico ~~and~~ or that is set forth in the board's Minimum Standards for the Practice of Architecture in New Mexico (16.30.6 NMAC);

(13) repeatedly (more than three (3) times) violating the Architectural Act, Sections 61-15-1 through -13 NMSA 1978, the rules and regulations of the board, or the architectural laws of any other state or jurisdiction;

(14) incurring a prior disciplinary action in another state or jurisdiction based upon acts or conduct by the registrant which if committed in this state would subject the registrant to disciplinary action by the board. Certified copies of the record of disciplinary action shall be conclusive evidence thereof; and

(15) failing to report to the board any adverse action taken against the registrant by (1) the licensing board of another jurisdiction or (2) the National Council of Architectural Registration Boards (NCARB) for acts or conduct that would constitute grounds for disciplinary action by the board.

K. Practice of architecture means rendering or offering to render those services described in Subsection B of Section 61-15-2 NMSA 1978 in connection with the design, construction, enlargement or alteration of a building or group of buildings and the space within the site surrounding those buildings which have as their principal purpose human occupancy or habitation (Subsection G of Section 61-15-2 NMSA 1978). "Offering to render" is defined as soliciting or executing architectural services.

L. "Project" means the building or a group of buildings and the space within the site surrounding the buildings as defined in the construction documents (Subsection H of Section 61-15-2 NMSA 1978). Architectural and engineering stamps are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required architectural and engineering seals.

M. "Responsible charge" means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised professional judgment with respect thereto. An architect's placing of the architect registration seal and signature on a document certifies that the architect has exercised direc-

tion, guidance and judgment on all issues pertaining to the health, safety and general welfare of the public, and accepts all legal responsibility for all architectural matters embodied within the document which shall meet the acceptable standards of architectural practice in the state of New Mexico as put forth by the board (Subsection I of Section 61-15-2 NMSA 1978).

N. "Signature" shall mean handwritten or electronic as follows:

(1) a handwritten identification that represents the act of putting one's name on a document to attest to its validity. The handwritten identification must be:

(a) original and written by hand;
(b) permanently affixed to the original document(s) being certified;

(c) applied to the document by the identified registrant; or

(2) an electronic identification that is attached to or logically associated with an electronic document. The electronic identification must be:

(a) unique to the person using it;
(b) under the sole control of the registrant using it;

(c) linked to a document in such a manner that the electronic identification is invalidated if any data in the document is changed.

[16.30.1.7 NMAC – Rp 16 NMAC 30.1.7, 9/6/2001; A, 9/15/2002; A, 9/15/2003]

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

This is an amendment to 16.30.3 NMAC: Sections 10, 11 & 15

16.30.3.10 REGISTRATION THROUGH RECIPROCITY:

A. An individual who holding a current NCARB certificate and is seeking registration through reciprocity or endorsement shall return a completed application and all fees to NCARB for processing.

B. An individual who cannot meet the requirements for NCARB certificate and is seeking registration through reciprocity or endorsement as a broadly-experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and have held such registration in a position of responsibility for at least five (5) years. The broadly-experienced category applicant shall return to the board a completed application, on the form prescribed by the board, along with other pertinent documents and the application fee. The board shall have the right to institute procedures for the broadly-experienced architect process as it deems

necessary. Each broadly-experienced category applicant shall provide to the board evidence of academic training and work experience directly related to architecture and demonstrating minimum competencies as described in 16.30.6 NMAC, including but not limited to evidence of training or experience in the following areas:

(1) design and construction documents;

(2) construction administration;

(3) management; and

(4) related activities.

C. Each applicant must attest on an affidavit that the applicant:

(1) has not performed or offered to perform, and will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

(2) is in good standing and has disclosed all requested information on disciplinary proceedings in any other jurisdiction; and

(3) has secured a copy and has read the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and the New Mexico Board of Examiners for Architects Rules and Regulations, and shall comply with the same.

D. All applicants must pass a New Mexico architectural jurisprudence exam administered by the board. An applicant who has failed two (2) successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one (1) year from the date of the last jurisprudence exam failed.

E. Applicants for registration through reciprocity or endorsement shall present a certificate of good standing from a jurisdiction in which a current and valid registration is held.

F. Seismic design requirements: Applicants for registration through reciprocity or endorsement shall present evidence satisfactory to the board of their qualification in design for seismic forces. The evidence shall be based on NCARB requirements existing at the time of application.

G. The board may require an applicant for registration through reciprocity or endorsement to appear before the board for a personal interview and to complete a written or oral examination.

H. The board shall review all applications on a case-by-case basis.

I. Provisional registration:

(1) An applicant for registration through reciprocity or endorsement may be issued a provisional registration prior to full registration upon satisfaction of the following requirements:

(a) the applicant has complied with all requirements prescribed in Subsections A-G of 16.30.3.10 NMAC above;

(b) the board director has certified that the application is complete and there are no apparent disciplinary actions pending or in force in any jurisdiction at the time of the application; and

(c) the exam and reciprocity committee has reviewed the application and will recommend registration at the next board meeting.

(2) The board may issue provisional registration to an applicant upon the review and recommendation of the application by the exam and reciprocity committee.

(3) Any provisional registration shall be valid only from the date of issuance through the date of the next regularly scheduled board meeting.

(4) An applicant for registration through reciprocity or endorsement who has received provisional registration and who engages in the practice of architecture during the term of provisional registration shall do so under the regulatory authority of the Architectural Act, Sections 61-15-1 through -13 NMSA 1978 and these rules and regulations.

J. Upon approval of the board, a new registrant will receive a wall certificate within a reasonable period following the board's decision.

[16.30.3.10 NMAC - Rp 16 NMAC 30.3.10, 9/6/2001; A, 9/15/2003]

16.30.3.11 REGISTRATION RENEWAL:

A. Fees: Renewal fees are paid biennially in even-numbered years. New registrations occurring in a non-renewal year shall be prorated on a yearly basis and shall expire on December 31st of that odd-numbered year. The fees for two (2) years are:

- (1) in state \$150.00
- (2) out of state \$250.00

B. Continuing education: Effective December 31, 2001, all architects will be required to show compliance with these mandatory education requirements as a condition for renewing registration:

(1) Purpose and scope: These rules provide for a continuing education program to insure that all architects remain informed of those technical subjects necessary to safeguard life, health, property, and promote the public welfare. These rules apply to all architects registered in New Mexico.

(2) Definitions:

(a) "Contact hour" means fifty (50) minutes actual time engaged in continuing education activities.

(b) "Health, safety and welfare

in architecture" is anything that relates to the structure or soundness of a building or site or its role in promoting the health, safety or well being of its occupants.

(3) Requirements:

(a) To renew registration, in addition to other requirements, an architect must have acquired continuing education for each 24-month period since the architect's last renewal of initial registration, or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration, or other disciplinary action, or both.

(b) Renewal period: For any 24-month biennial renewal period a total of twenty-four (24) contact hours from the activities listed in Paragraph (4) of Subsection B of 16.30.3.11 NMAC below must be reported. At least sixteen (16) contact hours shall be in public protection subjects: safeguarding life, health, property and promoting the public welfare. The remaining eight (8) hours may be acquired in more general subjects. No more than eight (8) hours may be carried over from one renewal cycle to another.

(4) Activities: The following list shall be used by all registrants in determining the types of activities that would fulfill continuing education requirements:

(a) contact hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions.

(b) contact hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions. Such presentations as those sponsored by the American Institute of Architects, Construction Specifications Institute, Construction Products Manufacturers Council or similar organizations devoted to architectural education may qualify.

(c) contact hours in attendance at short courses or seminars related to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers.

(d) contact hours spent in self-study courses such as those sponsored by the National Council of Architectural Registration Boards, American Institute of Architects or similar organizations. Up to three preparation hours may be credited for each class hour spent teaching architectural courses or seminars. College or university faculty may not claim credit for teaching regular curriculum courses.

(e) contact hours spent in architectural research that is published or formally presented to the profession or public.

(f) college or university credit

courses dealing with architectural subjects or business practice. Each semester hour shall equal fifteen (15) contact hours. A quarter hour shall equal ten (10) contact hours.

(g) contact hours spent in professional service to the public or profession on boards, commissions or committees that draws upon the registrant's professional expertise, such as: serving on planning commissions, building code advisory boards, urban renewal boards, professional boards or committees or code study committees. Except as allowable by law, all services must be provided pro bono.

(h) a maximum of eight (8) contact hours biennially for architectural services donated to charitable, religious, educational or other public or private non-profit organization, as defined under Section 501 (c) (3) of the Internal Revenue Code, organized for the benefit of the general public.

(i) mentoring: A maximum of eight (8) contact hours biennially may be acquired for serving as a mentor for the Intern Development Program (IDP) or the A.R.E. Study Sessions. Alternatively, a maximum of eight (8) contact hours may be acquired for serving as mentor for student/intern architectural projects that benefit the general public.

(j) contact hours spent in educational tours of architecturally significant buildings, where the tour is sponsored by a college, university or professional organization.

(5) Records and record-keeping:

(a) A registered architect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours.

(b) One (1) continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

(c) Failure to fulfill the continuing education requirements, or file the required biennial report, properly and completely signed, shall result in non-renewal of an architect's certificate of registration.

(d) Any untrue or false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and will subject the registrant to revocation of registration or other disciplinary action.

(6) Initial registration:

(a) An architect whose initial registration occurs less than twelve (12) months from the December 31st deadline of the next renewal cycle shall not be required to report continuing education hours.

(b) An architect whose initial registration occurs more than twelve (12) months from the December 31st deadline of the next renewal cycle but less than twenty-four (24) months from the date of initial registration shall be required to report twelve (12) contact hours, eight (8) of which shall be in public protection subjects.

(7) Reinstatement: A former registrant, with a registration that has been expired less than three (3) years may only apply for reinstatement under 16.30.3.13 NMAC if all delinquent contact hours are earned within the twelve (12) months preceding the application to renew. However, if the total number of contact hours required to become current exceeds twenty-four (24), then twenty-four (24) shall be the maximum number of contact hours required.

(8) Exemptions: A registrant shall be deemed to have complied with the foregoing continuing education requirements if the architect attests in the required affidavit that for not less than twenty-one (21) months of the preceding two-year period of registration, the architect:

(a) has served honorably on active duty in the military service (exceeding ninety (90) consecutive days); or

(b) is a resident of another state or district that accepts New Mexico requirements to satisfy its continuing education requirements, and certifies that all requirements for current continuing education compliance and registration have been met in that jurisdiction; or

(c) is a government employee working as an architect and assigned to duty outside the United States.

(9) Non-compliance:

(a) If any credits are disallowed by the board, then the registrant shall have one hundred and eighty (180) calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements. Such contact hours shall not be used again in the next renewal cycle.

(b) Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.

(10) The board may consider a hardship case.
[16.30.3.11 NMAC - Rp 16 NMAC 30.3.11, 9/6/2001; A, 9/15/2003]

16.30.3.15 ~~[SENIOR ARCHITECTS]~~ **ARCHITECT EMERITUS:** Upon written request, any architect registered in New Mexico who is ~~[sixty five (65)]~~ sixty (60) years of age or older may renew his or her registration for a biennial fee of twenty dollars (\$20.00) if the following requirements are met:

A. The registrant shall be ~~[sixty five (65)]~~ sixty (60) of age or older and retired from the practice of architecture on the date of his or her registration renewal. Retired means that the architect no longer practices architecture and no longer stamps and certifies construction documents with his or her seal.

B. The registrant shall have ten (10) years of continuous registration as an architect, five (5) years as a registered architect in New Mexico.

C. In the event ~~[a senior architect]~~ **an architect emeritus** wishes to reinstate a registration to practice architecture, the board may require proof of proficiency and the fulfillment of additional requirements deemed necessary.
[16.30.3.15 NMAC - Rp 16 NMAC 30.3.11.5, 9/6/2001, A, 9/15/2003]

**NEW MEXICO ENERGY,
MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

19 NMAC 15.N, Procedure, filed 01-18-96, has been reformatted and renumbered to 19.15.14 NMAC to comply with the current NMAC requirements, effective 8-29-03.

**NEW MEXICO OFFICE OF
THE STATE ENGINEER**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 26 SURFACE WATER
PART 11 DECLARATION OF
THE GALLINAS RIVER WATER SUB-
DISTRICT OF THE PECOS RIVER
STREAM SYSTEM**

19.26.11.1 ISSUING AGENCY: Office of State Engineer ("OSE").
[19.26.11.1 NMAC - N, 8/29/03]

19.26.11.2 SCOPE: This rule applies to all waters of the Gallinas river located in San Miguel and Guadalupe counties, state of New Mexico.
[19.26.11.2 NMAC - N, 8/29/03]

**19.26.11.3 S T A T U T O R Y
AUTHORITY:**

A. Section 72-2-8 NMSA (1997 Repl.) authorizes the OSE to develop, adopt, and promulgate all rules necessary to implement and administer the provisions of the Water Code.

B. New Mexico law declares that all natural water flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the pub-

lic and are subject to appropriation for beneficial use. NMSA 1978, Section 72-1-1 (1907).

C. The state engineer has a statutory duty to provide general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required. NMSA 1978, Section 72-2-1 (1907).

D. The state engineer has the responsibility for appropriation of the state's waters in accordance with the laws of the state. NMSA 1978, Section 72-2-1 (1907); Const. Art. XVI, Section 2.

E. The state engineer is authorized to establish water districts upon any stream system within the state of New Mexico as necessary for the economical and satisfactory apportionment of said waters. NMSA 1978, Section 72-3-1 (1907).

F. The state engineer is authorized to divide a stream system into sub-districts, each of which said sub-district shall be designated by a distinct name. NMSA 1978, Section 72-3-1 (1907).

G. The state engineer is authorized, if in his opinion it is in the interest of public safety or the best interest of water users in a water district, to appoint a water master who shall have immediate charge of the apportionment of waters in his district under the general supervision of the state engineer, and shall so appropriate, regulate and control the waters of such water districts so as to prevent waste. NMSA 1978, Section 72-3-2 (1907).
[19.26.11.3 NMAC - N, 8/29/03]

19.26.11.4 D U R A T I O N : Permanent.
[19.26.11.4 NMAC - N, 8/29/03]

19.26.11.5 EFFECTIVE DATE: August 29, 2003, unless a later date is cited at the end of a section.
[19.26.11.5 NMAC - N, 8/29/03]

19.26.11.6 OBJECTIVE: The objective of this rule is to declare the Gallinas River Water Sub-District of the Pecos River Stream System and to appoint a water master who will have immediate charge of such apportionment of such waters of the Gallinas river.
[19.26.11.6 NMAC - N, 8/29/03]

19.26.11.7 DEFINITIONS : [RESERVED]
[19.26.11.7 NMAC - N, 8/29/03]

**19.26.11.8 FINDINGS OF
FACT:**

A. The United States district court for the district of New Mexico handed down a decree on May 9, 1933 entitled "The United States of America,

Plaintiff, vs. Hope Community Ditch, et al., Defendants, No. 712 Equity," defining the rights of several parties to the use of water along the Pecos river in New Mexico and some of its tributaries, among which is the Gallinas river.

B. On May 6, 1935, said court relinquished jurisdiction of said case to the state engineer.

C. In order to properly apportion the waters of the Gallinas river in San Miguel and Guadalupe counties, New Mexico, the establishment of a water sub-district for those waters and the appointment of a water master in and for said water sub-district of the Pecos river water district is necessary.

D. The amount of water flowing in the Gallinas river is finite and varies year to year based on annual spring run-off, which is dependent on annual precipitation.

E. The city of Las Vegas, numerous acequia associations ("acequias"), Gallinas canal storage and irrigation company, and Storrie project water user's association ("Storrie project") are all water users of the Gallinas river.

F. Adjudication of water rights along the Gallinas river has not been completed.

G. Recent droughts in the state of New Mexico have created a water shortage crisis in the Pecos river stream system, including the Gallinas river.

H. The shortage of water on the Gallinas river is a problem affecting the citizens of San Miguel and Guadalupe counties.

I. By letter dated March 19, 2003, Storrie project requested that the state engineer administer the water in the Gallinas river.

J. By letter facsimiled May 19, 2003, several acequias requested that the state engineer administer the water in the Gallinas river.

K. On January 20, 1956, the Pecos river water district was declared by the state engineer.

L. Creation of a water sub-district and appointment of a water master for the Gallinas river is needed to ensure public safety and that the interests of each water user are protected so that they receive the water to which they are entitled.
[19.26.11.8 NMAC - N, 8/29/03]

19.26.11.9 CONCLUSIONS OF LAW:

A. Water sub-district creation and appointment of water master

(1) The state engineer concludes that in the interest of public safety and in the interest of water users, the GALLINAS RIVER WATER SUB-DISTRICT should be

formed and a water master appointed on a permanent basis, so as to administer the waters of the Gallinas river, a tributary of the Pecos river stream system, in accordance with New Mexico law.

(2) The GALLINAS RIVER WATER SUB-DISTRICT water master shall have immediate charge of the apportionment of waters in the water sub-district under the general supervision of the state engineer, and shall appropriate, regulate and control the waters of the water sub-district so as to prevent waste.

B. Administration of affected water rights

(1) The state engineer concludes that the immediate administration of water rights on the Gallinas river is necessary for the protection of the public, protection of prior water rights, and the prevention of waste.

(2) The state engineer concludes that the water master of the water sub-district created by this rule shall apportion the waters of the sub-district in accordance with the guidelines, existing or future regulations, manuals, directions, and supervision provided by the state engineer.

(3) Additional instructions to the water master for the apportionment of water within the sub-district will be based upon available data, models, (including water master manual models), surveys and the state engineer's best professional judgment.

(4) The state engineer concludes that the water sub-district created by this rule shall include the following organizational features:

(a) The appointment of a single water master for the GALLINAS RIVER WATER SUB-DISTRICT.

(b) The water master shall be a direct employee of the OSE and shall receive compensation in an amount to be determined by the state engineer. The water master shall also be compensated for all actual and necessary expenses incurred in performing the duties of water master.

(c) After appointment of the water master, the state engineer shall prepare a budget of estimated amount required to pay the compensation and expenses of the water master to the end of the current fiscal year, and shall certify the same to the board of county commissioners of San Miguel and Guadalupe counties, wherein the duties of the water master are to be performed. The budget shall specify the distribution of the amounts to be charged against and allotted to each water user or ditch owner, and which respective amounts shall be based upon the quantity of water received or to be received by each in proportion to the total quantities of water delivered or to be delivered under the water rights of all. The salary and expenses of the water master will

be paid monthly by the board of county commissioners in accordance with the requirements of NMSA, 1978, Section 72-3-4 (1907).

[19.26.11.9 NMAC - N, 8/29/03]

HISTORY OF 19.26.11 NMAC:

Pre-NMAC History:

Order No. 041, Declaration of Gallinas River Water District of the Pecos River Stream System, originally filed with the Supreme Court Law Library 7/27/53. Filed with the State Records Center 6/27/91.

History of Repealed Material:

Order No. 048 Rescinded Order No. 041 on 10/7/54.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.4.1 NMAC, Sections 5, 100, 101, 200, 300, 400, 401, 500, 501, 600, 601, 700, 800, 801, 900, 901, 1000, 1103, 1107 and adds a new section 1002, effective 10/01/2003.

20.4.1.5 EFFECTIVE DATE:
June 14, 2000 unless a later date is cited in the history note at the end of a section.
[20.4.1.5 NMAC - Rp 20 NMAC 4.1.5, 6/14/2000; A, 10/01/2003]

20.4.1.100 ADOPTION OF 40 CFR PART 260. Except as otherwise provided, the regulations of the United States Environmental Protection Agency ("EPA") set forth in 40 CFR Part 260 through July 1, ~~1999~~ 2002 are hereby incorporated ~~as~~ Subpart I of this Part by reference.
[20.4.1.100 NMAC - Rp 20 NMAC 4.1.1.101, 6/14/2000; A, 10/01/2003]

20.4.1.101 MODIFICATIONS AND EXCEPTIONS. Except as otherwise provided, the following modifications and exceptions are made to the incorporated federal regulations:

A. The following terms defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR Sections 260.10 and 270.2:

(1) "Administrator" or "Regional Administrator" means the Secretary of the New Mexico Environment Department or his/her designee;

(2) "Act" or "RCRA" (Resource Conservation and Recovery Act, as amended) means the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14 (as amended).

B. The following terms

not defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein when the terms are used in this Part:

(1) "Appropriate act or regulation" means the New Mexico Hazardous Waste Act or 20.4.1 NMAC;

(2) "Board" means the Environmental Improvement Board;

(3) "CFR" means the Code of Federal Regulations;

(4) "Department" means the New Mexico Environment Department;

(5) "Environmental Protection Agency" or "EPA" shall be construed to mean the New Mexico Environment Department except when used in the phrases "EPA hazardous waste number," "EPA identification number," "EPA Region," "EPA Acknowledgment of Consent," "EPA Test Methods," and in the definitions set forth in 40 CFR Sections 260.10 and 270.2;

(6) "Freedom of Information Act" or "FOIA" means NMSA 1978, Sections 14-2-1 through 14-2-12, 14-3A-1 through 14-3A-2, and 74-4-4.3D (as amended);

(7) "Hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

(8) "Secretary" means the Secretary of the New Mexico Environment Department or his/her designee; and

(9) "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14 (as amended).

C. The following provisions of 40 CFR Part 260 are omitted from ~~[Subpart I of this Part]~~ Section 20.4.1.100 NMAC:

- (1) Section 260.1(b)(6);
- (2) Section 260.20;
- (3) Section 260.22;
- (4) Section 260.30;
- (5) Section 260.31;
- (6) Section 260.32; and
- (7) Section 260.33.

D. Wherever there is any requirement in any of the federal regulations incorporated into this Part to report an emergency situation, the requirement shall be construed to mean that the party required to report shall report the incident to the Department via the New Mexico 24-hour emergency response number at (505) 827-9329 or such other number designated by the Department.

[20.4.1.101 NMAC - Rp 20 NMAC 4.1.102, 6/14/2000; A, 10/01/2003]

20.4.1.200 ADOPTION OF 40 CFR PART 261. Except as otherwise pro-

vided, the regulations of the EPA set forth in 40 CFR Part 261 through July 1, [1999] 2002 are hereby incorporated ~~as Subpart H of this Part~~ by reference.

[20.4.1.200 NMAC - Rp 20 NMAC 4.1.200, 6/14/2000; A, 10/01/2003]

20.4.1.300 ADOPTION OF 40

CFR PART 262. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 262 through July 1, [1999] 2002 are hereby incorporated ~~as Subpart H of this Part~~ by reference. The substitution of the following terms in Subparts E, F and H of 40 CFR Part 262 does not apply to ~~[Subpart III of this Part]~~ Section 20.4.1.300 NMAC: "Administrator" and "Regional Administrator" for the term "Secretary" and "EPA" or "Environmental Protection Agency" for the term "Department."

[20.4.1.300 NMAC - Rp 20 NMAC 4.1.300, 6/14/2000; A, 10/01/2003]

20.4.1.400 ADOPTION OF 40

CFR PART 263. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 263 through July 1, [1999] 2002 are hereby incorporated ~~as Subpart IV of this Part~~ by reference.

[20.4.1.400 NMAC - Rp 20 NMAC 4.1.400, 6/14/2000; A, 10/01/2003]

20.4.1.401 OMISSIONS. The following provision of 40 CFR Part 263 is omitted from ~~[Subpart IV of this Part]~~ Section 20.4.1.400 NMAC: Section 263.20(e).

[20.4.1.401 NMAC - Rp 20 NMAC 4.1.401, 6/14/2000; A, 10/01/2003]

20.4.1.500 ADOPTION OF 40

CFR PART 264. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 264 through July 1, [1999] 2002 are hereby incorporated ~~as Subpart V of this Part~~ by reference. The substitution of "Secretary" for the term "Regional Administrator" in ~~[Subpart I]~~ Section 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 264.12(a), as adopted in this ~~[Part]~~ section.

The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the Secretary at the time that notice is provided to the Regional Administrator. The substitution of "Department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 264.1082(c)(4)(ii).

[20.4.1.500 NMAC - Rp 20 NMAC 4.1.500, 6/14/2000; A, 10/01/2003]

20.4.1.501 OMISSIONS. The fol-

lowing provisions of 40 CFR Part 264 are omitted from ~~[Subpart V of this Part]~~ Section 20.4.1.500 NMAC:

- A. Section 264.1(f);
- B. Section 264.149;
- C. Section 264.150;
- D. Section 264.301(1);
- E. Section 264.1030(d);
- F. Section 264.1050(g);

and

- G. Sections 264.1080(e), 264.1080(f), 264.1080(g).

[20.4.1.501 NMAC - Rp 20 NMAC 4.1.501, 6/14/2000; A, 10/01/2003]

20.4.1.600 ADOPTION OF 40

CFR PART 265. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 265 through July 1, [1999] 2002 are hereby incorporated ~~as Subpart VI of this Part~~ by reference. The substitution of "Secretary" for the term "Regional Administrator" in ~~[Subpart I]~~ Section 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 265.12(a), as adopted in this ~~[Part]~~ section.

The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the Secretary at the time that notice is provided to the Regional Administrator. The substitution of "Department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 265.1083(c)(4)(ii).

[20.4.1.600 NMAC - Rp 20 NMAC 4.1.600, 6/14/2000; A, 10/01/2003]

20.4.1.601 OMISSIONS. The following provisions of 40 CFR Part 265 are omitted from ~~[Subpart VI of this Part]~~ Section 20.4.1.600 NMAC:

- A. Section 265.1(c)(4);
- B. Section 265.149;
- C. Section 265.150;
- D. Section 265.1030(c);
- E. Section 265.1050(f);

and

- F. Sections 265.1080(e), 265.1080(f), 265.1080(g).

[20.4.1.601 NMAC - Rp 20 NMAC 4.1.601, 6/14/2000; A, 10/01/2003]

20.4.1.700 ADOPTION OF 40

CFR PART 266. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 266 through July 1, [1999] 2002 are hereby incorporated ~~as Subpart VII of this Part~~ by reference.

[20.4.1.700 NMAC - Rp 20 NMAC 4.1.700, 6/14/2000; A, 10/01/2003]

20.4.1.800 ADOPTION OF 40 CFR PART 268. Except as otherwise pro-

vided, the regulations of the EPA set forth in 40 CFR Part 268 through July 1, ~~1999~~ 2002 are hereby incorporated ~~[as Subpart VIII of this Part]~~ by reference. The substitution of "Department" for the term "EPA" in ~~[Subpart I]~~ Section 20.4.1.101 NMAC does not apply to 40 CFR Section 268.1(e)(3), as adopted in this ~~[Part]~~ section. [20.4.1.800 NMAC - Rp 20 NMAC 4.1.800, 6/14/2000; A, 10/01/2003]

20.4.1.801 OMISSIONS. The following provisions of 40 CFR Part 268 are omitted from ~~[Subpart VIII of this Part]~~ Section 20.4.1.800 NMAC:

- A. Section 268.5;
- B. Section 268.6;
- C. Section 268.42(b); and
- D. Section 268.44(a)

through 264.44(g). [20.4.1.801 NMAC - Rp20 NMAC 4.1.801, 6/14/2000; A, 10/01/2003]

20.4.1.900 ADOPTION OF 40 CFR PART 270. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 270 through July 1, ~~1999~~ 2002 are hereby incorporated ~~[as Subpart IX of this Part]~~ by reference. The substitution of the terms "EPA," "Regional Administrator" and "Administrator" in ~~[Subpart I]~~ Section 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2)&(3), 270.10 (g)(1)(i), 270.11 (a) (3), 270.32(c), 270.72(a)(5), and 270.72(b)(5), as adopted in this ~~[Part]~~ section.

[20.4.1.900 NMAC - Rp 20 NMAC 4.1.900, 6/14/2000; A, 10/01/2003]

20.4.1.901 PERMITTING PROCEDURES

A. Permit Issuance or Denial.

(1) Once an application is determined to be administratively and technically complete, the Secretary shall prepare and issue either a Draft Permit or a Notice of Intent to Deny.

(a) A Draft Permit shall contain all conditions, compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in 40 CFR Part 270.

(b) A Notice of Intent to Deny shall state the Secretary's reasons for the intended denial.

(2) Any Draft Permit or Notice of Intent to Deny prepared by the Department under ~~[section 901.A.1 of this Part]~~ Paragraph (1) of this subsection shall be accompanied by a fact sheet and shall be based on the administrative file. Copies of the fact sheet shall be sent to the applicant; to any state or federal agency, as applicable;

and, upon request, to any other person.

(3) The Secretary shall give public notice that a Draft Permit or a Notice of Intent to Deny has been prepared, and shall allow forty-five (45) days for review and public comment, including requests for public hearing.

(4) If the Secretary issues a Draft Permit, and a timely written notice of opposition to the Draft Permit and a request for a public hearing is received, the Department, acting in conjunction with the applicant, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing.

(5) No ruling shall be made on permit issuance or denial without an opportunity for a public hearing, at which all interested persons shall be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at the public hearing. A public hearing shall be scheduled if:

(a) the Secretary issues a Notice of Intent to Deny, and a timely request for public hearing is received from the applicant;

(b) the Secretary issues a Draft Permit, a timely request for public hearing is received from any person opposed to the granting of a permit, and such person does not subsequently withdraw the request pursuant to ~~§ 901.A.4 of this Part~~ Paragraph (4) of this subsection; or

(c) the Secretary determines, no later than five (5) days following the end of the comment period specified in ~~[section 901.A.3 of this Part]~~ Paragraph (4) of this subsection, that a public hearing should be held notwithstanding the absence of a timely request for public hearing.

(6) The comment period specified in ~~[section 901.A.3 of this Part]~~ Paragraph (3) of this subsection shall automatically be extended to the close of any public hearing.

(7) The Secretary shall give due consideration and the weight he/she deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at a public hearing.

(8) When ruling on permit issuance or denial, the Secretary may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the permit applied for will not meet the requirements of these regulations.

(9) At the time that any final permit decision is issued, the Secretary shall issue a response to comments. This response shall:

(a) specify which provisions, if any, of the draft permit have been changed

in the final permit decision, and the reasons for the change;

(b) briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing, and

(c) be available to the public.

(10) A final permit decision shall become effective thirty (30) days after notice of the decision has been served on the applicant, or such later time as the Secretary may specify. This provision shall not be construed to extend the time for appeal of a permit decision as provided by the Hazardous Waste Act.

(11) The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.

(12) The Secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date.

B. Permit Modifications, Suspension and Revocation.

(1) The Secretary may modify, suspend, or revoke a permit issued pursuant to ~~[section 901.A]~~ Subsection A of this ~~[Part]~~ section for cause set forth in 40 CFR Part 270 and the Act.

(2) The Secretary may modify, suspend, revoke any permit upon his/her initiative, or if, after the Department's investigation of the facts and circumstances, pursuant to the request of any interested person, such permit action is deemed warranted.

(3) Requests for permit modification, suspension, revocation shall be in writing and shall contain facts or reasons supporting the request.

(4) If the Secretary decides that the request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation, and reissuance, or termination are not subject to public notice, comment, or hearings.

(5) If the Secretary decides to modify or revoke and reissue a permit under 40 CFR section 270.41 or 40 CFR section 270.42(c), a draft permit shall be prepared incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit the Secretary shall require the submission of a new application.

(6) In a permit modification under this section, only those conditions to be modified shall be reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is

reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the exiting permit until a new final permit is reissued.

(7) If the Secretary decides to terminate a permit under 40 CFR section 270.43, a notice of intent to terminate shall be issued. The Secretary shall follow the applicable procedures as required for a Draft Permit under Section ~~901 of this Part~~ 20.4.1.901 NMAC.

C. Public Notices.

(1) Pre-application public meeting and notice. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR Section 124.31 through July 1, ~~1999~~ 2002 is hereby incorporated ~~[in this Part]~~ by reference.

(2) Public notice requirements at the application stage. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.32 through July 1, ~~1999~~ 2002 is hereby incorporated ~~[in this Part]~~ by reference.

(3) Public notice of issuance of a Draft Permit or a Notice of Intent to Deny, and of any public hearing scheduled, shall be given by publication of a notice in a newspaper of general circulation in the area affected, broadcasts over local radio stations and by mailing a copy of the notice to the permit applicant, those individuals on the Department mailing list of persons interested in hazardous waste permit actions, and to any unit of local, state and federal government as may be applicable.

(4) All public notices issued shall contain the following minimum information:

(a) The subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;

(b) A brief description of the procedures by which requests for hearings may be made, unless already scheduled;

(c) The name and address of the office processing the permit action for which notice is being given;

(d) The name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;

(e) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(f) The name, address and telephone number of a person from whom interested persons may obtain further information;

(g) In addition, public notice of a scheduled public hearing shall also contain references to the dates of previous public

notices relating to the permit;

(h) The notice shall state where interested persons may secure copies of any proposed Draft Permit or Notice of Intent to Deny.

D. Fact Sheet.

(1) A fact sheet shall be prepared for every Draft Permit for a hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the Draft Permit.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the Draft Permit;

(b) The type and quantity of wastes which are proposed to be or are being treated, stored, disposed, injected, emitted, or discharged.

(c) A brief summary of the basis for the Draft Permit conditions including references to applicable statutory or regulatory provisions.

(d) Reasons why any request for variance or alternative to require standards do or do not appear justified.

(e) A description of the procedures for reaching a final decision on the Draft Permit including:

(i) The beginning and ending dates of the comment period and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(iv) Name and telephone number of a person to contact for additional information.

(3) The fact sheet shall be available at the time the public notice is published.

E. Information repository. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.33 through July 1, ~~1999~~ 2002 is hereby incorporated ~~[in this Part]~~ by reference.

F. Hearings.

(1) Public notice of any public hearing shall be given at least thirty (30) days prior to the scheduled date of the hearing and shall state the subject.

(2) Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the Secretary.

(3) The Secretary may designate a hearing officer to take evidence at the hearing.

(4) All hearings shall be recorded by a certified court reporter. A transcript

will be furnished to all persons for review at the Department's main office. Costs of a copy of a transcript will be borne by those requesting such copies.

(5) In hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.

(a) Testimony for hearings on permit issuance or modification shall be presented in the following order:

(i) testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification);

(ii) testimony by other persons (except the Department) supporting issuance or modification of the permit, in any reasonable order;

(iii) testimony by persons (except the Department) opposed to issuance or modification of the permit, in any reasonable order;

(iv) testimony by the Department; and

(v) rebuttal testimony, as appropriate.

(b) Testimony for hearings on permit suspension or revocation shall be as follows:

(i) testimony by the Department;

(ii) testimony by other persons supporting suspension or revocation of the permit, in any reasonable order;

(iii) testimony by the permittee;

(iv) testimony by other persons

opposed to suspension or revocation of the permit, in any reasonable order; and

(v) rebuttal testimony, as appropriate.

(c) In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.

(7) The burden of proof at hearings shall be as follows:

(a) For hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee.

(b) For hearings on permit suspension or revocation, the burden of proof shall be on the Department.

G. Secretary's Decision.

(1) Any person heard or represented at the hearing shall be given written notice of the action of the Secretary.

(2) The Secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.

H. Appeals. Appeals of the Secretary's decision shall be as provided by

the Hazardous Waste Act.

(1) The filing of an appeal does not act as a stay of any action required by the Secretary's decision.

(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the Secretary in deciding upon the permit action.

[20.4.1.901 NMAC - Rp 20 NMAC 4.1.901, 6/14/2000; A, 10/01/2003]

20.4.1.1000 ADOPTION OF 40 CFR PART 273. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 273 through July 1, ~~1999~~ 2002 are hereby incorporated ~~[as Subpart X of this Part]~~ by reference.

[20.4.1.1000 NMAC - Rp 20 NMAC 4.1.1000, 6/14/2000; A, 10/01/2003]

20.4.1.1002 ADOPTION OF 40 CFR PART 279. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 279 through July 1, 2002 are hereby incorporated by reference.

[20.4.1.1002 NMAC - N, 10/01/2003]

~~[20.4.1.1002]~~ **20.4.1.1003 - 20.4.1.1099**
[Reserved]

[20.4.1.1002 - 20.4.1.1099 - Rp 20 NMAC 4.1.1002 - 4.1.1100, 6/14/2000; A, 10/01/2003]

20.4.1.1103 REFERENCE TO 40 CFR PART 280. Reference to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the New Mexico Underground Storage Tank Regulations, ~~[20 NMAC 5.1 - 5.16]~~ 20.5.1 through 20.5.17 NMAC.

[20.4.1.1103 NMAC - Rp 20 NMAC 4.1.1104, 6/14/2000; A, 10/01/2003]

20.4.1.1107 AVAILABILITY OF MATERIALS INCORPORATED BY REFERENCE. Materials incorporated by reference into this Part may be reviewed at the New Mexico Hazardous ~~and Radioactive Materials~~ Waste Bureau, ~~[2044 Galisteo]~~ 2905 Rodeo Park Drive East, Bldg. 1, Santa Fe, New Mexico 87505.

[20.4.1.1107 NMAC - Rp 20 NMAC 4.1.1109, 6/14/2000; A, 10/01/2003]

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION**

**CHAPTER 20 ACCOUNTING BY
GOVERNMENTAL ENTITIES
PART 5 RESPONSIBILITY
FOR ACCOUNTING FUNCTION**

2.20.5.1 ISSUING AGENCY:
Department of Finance and Administration
[2.20.5.1 NMAC - N, 08-29-03]

2.20.5.2 SCOPE: Establishes accountability for accounting function in all state agencies as defined by section 6-5-1 NMSA 1978, as amended, without exception.
[2.20.5.2 NMAC - N, 08-29-03]

2.20.5.3 STATUTORY AUTHORITY: Section 6-5-2, NMSA 1978, as amended, requires the division to maintain a central system of state accounts and to devise, formulate, approve and control and set standards for the accounting methods and procedures of all state agencies. Section 6-5-2 NMSA 1978, as amended, requires the division prescribe procedures, policies and processing documents for use by state agencies in connection with fiscal matters and may require reports from state agencies as may be necessary to carry out its duties and functions. Section 9-6-5 (E) NMSA 1978, as amended, authorizes the secretary of the department to make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions.

[2.20.5.3 NMAC - N, 08-29-03]

2.20.5.4 DURATION :
Permanent
[2.20.5.4 NMAC - N, 08-29-03]

2.20.5.5 EFFECTIVE DATE:
August 29, 2003
[2.20.5.5 NMAC - N, 08-29-03]

2.20.5.6 OBJECTIVE: To establish accountability for the accounting function by establishing, at the state agency level, standards for the proper recording, summarizing, and reporting of financial transactions and designating one state employee at each state agency to be responsible for maintaining those standards.
[2.20.5.6 NMAC - N, 08-29-03]

2.20.5.7 DEFINITIONS:
A. "Accounting function" means the methods and procedures, be they manual or automated, used by a state agency to record, summarize, and report its financial transactions.

B. "Accounting system" means the total structure of records and procedures used to record, to classify, to summarize, and to report on the financial posi-

tion of a governmental entity or any of its funds, fund types, or organizational components.

C. "Chief financial officer" is the working title of the state employee assigned the responsibilities set forth in Subsection C of 2.20.5.8 NMAC.

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

E. "Division" means the financial control division of the department of finance and administration.

F. "State agency" means any department, institution, board, bureau, commission, district or committee of the government of the state and means every office or officer of any of the above.

G. "Timely" means in substantial compliance with the due dates established by the division.

[2.20.5.7 NMAC - N, 08-29-03]

2.20.5.8 CHIEF FINANCIAL OFFICER AND ASSIGNMENT OF RESPONSIBILITIES:

A. Statute requires that the administrative head of each agency ensure that the model accounting practices, established by the division, are followed. In order to ensure that model accounting practices are followed, it is incumbent upon the agency head to carryout the responsibilities of the chief financial officer, outlined in Subsection C of 2.20.5.8 NMAC.

B. An agency head may assign the responsibilities outlined in Subsection C of 2.20.5.8 NMAC to any employee within the agency that has the educational background, knowledge, and experience necessary to supervise, monitor, and control the state agency's accounting function. The delegation must be in writing, must be for a specific fiscal year, and must be approved by the division.

C. It is the responsibility of the chief financial officer to ensure that:

(1) an internal control structure exists at the state agency and is functioning properly.

(2) all transactions are recorded daily in the agency's accounting records.

(3) all transactions are properly classified in the agency's records.

(4) cash account records are reconciled timely each month to the division's reports and to the state treasurer's reports.

(5) all transactions comply with federal and state law.

(6) all expenditures have a public benefit or purpose, are necessary, and are consistent with the appropriation, the expenditure authority from the legislature and comply with Section 6-5-3 NMSA 1978, as amended.

(7) all accounting systems,

including subsidiary systems, are recording transactions timely, completely, and accurately.

(8) all payments to vendors are accurate, timely and the state agency has certified they are for services rendered or goods received in accordance with Section 13-1-158 NMSA 1978, as amended.

(9) all information requested by the division from the state agency is provided timely and accurately.

(10) all reporting of financial information must be timely, complete and accurate, to the state agency's management and to oversight agencies and entities.

(11) the state agency's annual financial statement audit is completed by the deadline established by the state auditor and the audit report includes an unqualified opinion.

(12) a budgetary control system, approved by the state budget division of the department of finance and administration, is in place and functioning.

[2.20.5.8 NMAC - N, 08-29-03]

HISTORY OF 2.20.5 NMAC:
[RESERVED]

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 20 ACCOUNTING BY
GOVERNMENTAL ENTITIES
PART 6 AUTHORITY TO
ISSUE WARRANTS**

2.20.6.1 ISSUING AGENCY:
Department of Finance and Administration.
[2.20.6.1 NMAC - N, 08-29-03]

2.20.6.2 SCOPE: Applies to all state agencies, as defined by section 6-5-1 NMSA 1978, as amended, seeking authorization to issue warrants or exception from the requirement of prior submission of proposed vouchers, purchase orders or contracts to the division as provided in section 6-5-3 NMSA 1978, as amended.
[2.20.6.2 NMAC - N, 08-29-03]

2.20.6.3 STATUTORY AUTHORITY: Section 6-5-9 NMSA 1978, as amended, requires the secretary of the department to annually issue a written order granting authorization to a particular state agency to issue warrants or exception from the requirement of prior submission of proposed vouchers, purchase documents, purchase orders or contracts to the division as provided in section 6-5-3 NMSA 1978, as amended when efficiency or economy so

requires. Section 9-6-5 (E) NMSA 1978, as amended, authorizes the secretary of the department to make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions.

[2.20.6.3 NMAC - N, 08-29-03]

2.20.6.4 DURATION:
Permanent
[2.20.6.4 NMAC - N, 08-29-03]

2.20.6.5 EFFECTIVE DATE:
August 29, 2003
[2.20.6.5 NMAC - N, 08-29-03]

2.20.6.6 OBJECTIVE: The object of this rule is to provide the conditions state agencies shall fulfill prior to applying to obtain an authorization to issue warrants or exception from the requirement of prior submission of proposed vouchers, purchase documents, purchase orders or contracts to the division. Also, the object of this rule is to ensure that a state agency that is applying to obtain such authorization or exception is recording and reporting its financial transactions timely, completely, and accurately and that its accounting system follows all the division's current policies and procedures. Reporting includes, but is not limited to: the reporting in audited financial statements; managerial reporting; reporting to oversight agencies including commissions, committees, and the legislature; and detailed transaction reporting to the division.

[2.20.6.6 NMAC - N, 08-29-03]

2.20.6.7 DEFINITIONS:
A. "Accounting system" means the total structure of records and procedures used to record, to classify, to summarize, and to report on the financial position of a governmental entity or any of its funds, fund types, or organizational components.

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

C. "Division" means the financial control division of the department of finance and administration.

D. "State agency" means any department, institution, board, bureau, commission, district or committee of the government of the state and means every office or officer of any of the above.

E. "Warrant" means a written instrument issued by the division authorizing payment of a specified amount to a designated payee out of the state treasurer's funds.

F. "Timely" means in substantial compliance with the due dates established by the division.

[2.20.6.7 NMAC - N, 08-29-03]

2.20.6.8 APPLICATION PROCEDURES AND CONDITIONS OF APPROVAL OF AUTHORIZATION OR EXCEPTION:

A. Each and every December 31, a state agency that wishes to issue warrants or exception from the requirement of prior submission of proposed vouchers, purchase orders, or contracts to the division for the following fiscal year (July 1 through June 30) shall apply for authorization or exception by submitting a written request to the secretary of the department explaining in detail the reasons why efficiency or economy will be better achieved by the state agency issuing warrants or waiving the prior submission requirements. As part of this annual request, the state agency shall include a detailed report outlining how it has complied during the past calendar year (January through December) with the following conditions and standards:

(1) A well-documented internal control structure shall exist within the state agency and functioning properly.

(2) All transactions shall be recorded daily in the state agency's accounting records.

(3) All transactions shall be properly classified in the state agency's records.

(4) The state agency's cash account records shall be reconciled timely each month to the division's reports and to the state treasurer's reports. If the agency maintains an account directly with a financial institution instead of with the state treasurer, the agency's cash account shall be reconciled timely to the financial institution's statement of account.

(5) All transactions shall comply with federal and state law.

(6) All expenditures shall be for a public benefit or purpose, be necessary, and be consistent with the related appropriation (expenditure authority from the legislature).

(7) All accounting systems, including subsidiary systems, shall record transactions timely, completely, and accurately.

(8) All payments to vendors shall be accurate and timely and be for services already rendered or goods received and accepted by the state agency as complying with the contract or purchase order.

(9) All information requested by the division must be provided to the division timely and accurately, and in compliance with the division's current policies and procedures, including, but not limited to, transaction data.

(10) All reporting of financial information to the state agency's management and to oversight agencies and entities

must be timely, complete, and accurate.

(11) The audit of the state agency's financial statements shall be completed by the deadline established by the state auditor and the audit report shall include an unqualified opinion.

B. Failure to meet any of the standards and conditions above is grounds for the secretary to deny approval to the agency to issue warrants or deny an exception to the prior submission requirements.

C. The secretary may request the division's office of the state controller to verify the maintenance of the above standards and conditions during the annual period for which the authorization is granted. The state agency shall cooperate in providing the division's office of the state controller with the information it requests.

D. If the secretary does grant approval to the state agency for the authorization to issue warrants or exception to the prior submission requirements, that approval is only for the fiscal year beginning July 1 following the request.

E. If the state agency is issuing warrants or is waived from the prior submission requirements at the time it makes the application and the secretary denies the request for the subsequent fiscal year, the agency shall not issue warrants after the June 30th following the denied request.

F. By March 1 following the denied request, the state agency shall make arrangements with the division for the division to issue the warrants for the state agency beginning the July 1 following the denied request. As allowed by law, this shall include the transfer of financial resources to the division to cover the cost of issuing the warrants and administering the prior submission of proposed vouchers, purchase orders and contracts.

[2.20.6.8 NMAC - N, 08-29-03]

HISTORY OF 2.20.6 NMAC:
[RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 31 HUNTING AND FISHING REGULATIONS PART 5 UPLAND GAME

19.31.5.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 8-29-2003]

19.31.5.2 SCOPE: Hunters of Upland Game. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.

[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 8-29-2003]

19.31.5.3 S T A T U T O R Y AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 8-29-2003]

19.31.5.4 DURATION: August 29, 2003-March 31, 2004.

[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 8-29-2003]

19.31.5.5 EFFECTIVE DATE: August 29, 2003 unless a later date is cited at the end of individual Sections.

[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 8-29-2003]

19.31.5.6 O B J E C T I V E : Establishing seasons on Blue-winged teal, Green-winged teal, Cinnamon teal, pheasant, Blue grouse, Lesser prairie-chicken, Montezuma quail, Northern bobwhite, Scaled quail, Gambel's quail, Mourning dove, White-winged dove, Eurasian-colored dove, Band-tailed pigeon, Sandhill crane, Abert's squirrel, Red squirrel, and setting falconry seasons.

[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 8-29-2003]

19.31.5.7 DEFINITIONS:

A. "Area GS-1" (GS-1), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Colorado border at I-25, south on I-25 to U.S. 285, south on U.S. 285 to N.M. 41, south on N.M. 41 to U.S. 60, west on U.S. 60 to I-25, north on I-25 to N.M. 44, northwest on N.M. 44 to the southeastern border of the Jicarilla Apache Indian reservation, north on the Jicarilla Apache Indian reservation border to the New Mexico-Colorado border, east to I-25.

B. "Area GS-2" (GS-2), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at I-40, east on I-40 to I-25, south on I-25 to I-10, west on I-10 to N.M. 11, south on N.M. 11 to the New Mexico-Mexico border, west to the New Mexico-Arizona border, north to I-40.

C. "Area S-3" (S-3), as

used herein, shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 54, north on U.S. 54 to U.S. 285, south on U.S. 285 to the New Mexico-Texas border, east to U.S. 54.

D. "Area S-4" (S-4), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at Four-corners south to I-40; east on I-40 to I-25; north on I-25 to N. M. 44; northwest on N. M. 44 to the southern reservation boundary of the Jicarilla Apache reservation; north and west along the western reservation boundary to the New Mexico-Colorado border; west along the New Mexico-Colorado border to the four-corners.

E. "Lesser prairie-chicken hunting area", as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 60, south along the New Mexico-Texas border to N.M. 234, west on N.M. 234 to N.M. 8, west on N.M. 8 to N.M. 176, west on N.M. 176 to U.S. 62-180, west on U.S. 62-180 to the Pecos river, north along the Pecos river to U.S. 60, east to the New Mexico-Texas border, including all Lesser prairie-chicken management areas owned by the state game commission.

F. "Middle Rio Grande valley hunt area (MRGV)", as used herein, shall mean Valencia and Socorro counties.

G. "Eastern New Mexico Sandhill crane hunt area (eastern)", as used herein, shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

H. "Southwest New Mexico Sandhill crane hunt area (southwest)", as used herein, shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

I. "Southwest Band-tailed pigeon hunting area" (southwest. BPHA), as used herein, shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

J. "Regular Band-tailed pigeon hunting area" (regular BPHA), as used herein, shall mean that portion of New Mexico not included in the southwest Band-tailed pigeon hunt area.

K. "Central flyway", as used herein, shall mean that portion of New Mexico east of the Continental Divide, with

the exception of the Jicarilla Apache Indian reservation.

L. "Non-toxic shot", as used herein, shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

M. "Possession limit", as used herein, shall mean twice the daily bag limit except where otherwise defined.

N. "Dove north zone" (north zone), as used herein, shall mean that portion of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

O. "Dove south zone" (south zone), as used herein, shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

P. "Estancia valley Sandhill crane hunt area (EV) ", as used herein, shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair. [19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-29-2003]

19.31.5.8 OPEN AREAS, SPECIES, SEASONS DATES, AND DAILY BAG LIMITS:

2003-2004 season: all dates are 2003 unless otherwise specified.

<u>SPECIES</u>	<u>OPEN AREAS</u>	<u>SEASON OPEN</u>	<u>DAILY BAG LIMIT</u>
Teal	central flyway portion of state	Sept. 20-28	4 (singly or in aggregate)
Pheasant	statewide, excluding Valencia county	Dec. 11-14	3(males)
	Valencia county	Dec. 13	3(males)
Youth-only pheasant hunt *See information; Section 19.31.5.14	Seven Rivers WMA and Bitter Lakes NWR	Dec. 6	3(males)
Pheasant (special permit) *See information; Section 19.31.5.14	Seven Rivers WMA and W.S. Huey WMA	Dec. 13	3(males)
Blue grouse	GS-1 GS-2	Sept. 1-30	3
		Oct. 1-31	3
Lesser prairie-chicken	SEASON CLOSED		
Quail: Gambel's, scaled, Northern bobwhite and Montezuma (Mearns)	statewide	Nov. 15 – Jan 31, 2004	15 (singly or in aggregate; no more than 5 shall be Mearns)
Sandhill crane *Special permit required; See information Section 19.31.5.11	MRGV	Oct. 25-26	1 (2 per season)
	EV	Oct. 25-26	2 (4 per season)
	MRGV	Nov. 15-16	1 (2 per season)
	MRGV	Dec. 06-07	1 (2 per season)
	southwest	Nov. 01-02 and Jan. 03-04, 2004	2 (8 per season)
	MRGV	Jan. 10-11, 2004	1 (2 per season) (possession-6, regular and special seasons combined)
Sandhill crane *Special permit required; See information Section 19.31.5.12	eastern	Oct. 31- Jan. 31, 2004	3

Band-tailed pigeon	southwest. BPHA	Oct. 1-20	5
	regular BPHA	Sept. 1-20	5
Dove	north zone	Sept. 1-Oct.30	15 (singly or in aggregate)
Mourning, White-winged, and Eurasian-collared doves	south zone	Sept. 1-30 and Nov. 15-Dec 14	15 (singly or in aggregate)
Tree squirrel	GS-1	Sept. 1-Oct. 31	8 (singly or in aggregate)
	GS-2	Oct. 1-Nov. 30	
	S-3	Sept. 1-Oct. 31	
	S-4	Sept. 1-Oct. 31	

A. The William S. Huey WMA shall be open for dove, quail, and Sandhill crane hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.

B. The Brantley wildlife management area (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for dove, quail, pheasant, September teal, and Sandhill crane hunting during established statewide seasons. Use of vehicles will be restricted to designated areas.

C. The Seven Rivers WMA shall be open for dove, quail, September teal, and Sandhill crane hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.
[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-29-2003]

19.31.5.9 WATERFOWL AREAS, DAYS OPEN, AND HUNTING HOURS FOR HUNTING SEPTEMBER TEAL:

A. That portion of the Bernardo WMA south of US-60 is open to teal hunting each day of the September Teal season.

B. The entire La Joya WMA is open to teal hunting each day of the September teal season.

C. The Seven Rivers waterfowl management area is open for hunting teal on Monday, Wednesday, and Saturday during the September teal season.

D. The Brantley wildlife management area is open for hunting teal each day of the September teal season.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-29-2003]

19.31.5.10 OTHER STATE WILDLIFE MANAGEMENT AREAS OPEN FOR HUNTING:

A. The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting species listed herein during established seasons.

B. The Sandia ranger district of the Cibola national forest shall be open to archery only hunting of species listed herein during established seasons.

C. The Lesser prairie-chicken management areas shall be open to hunt quail and dove during established seasons.

D. The Big Hatchet mountain wildlife management area shall be open for quail hunting.

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-29-2003]

19.31.5.11 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE, SOUTHWEST NEW MEXICO AND ESTANCIA SANDHILL CRANE SEASONS:

A. Six separate Sandhill crane seasons are scheduled with up to a total of 320 permits available. The permits will be allocated by season as follows:

(1) 2003-2004 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
October 25-26	SCR-0-101	MRGV	60
October 25-26	SCR-0-102	EV	40
November 15-16	SCR-0-103	MRGV	50
December 6-7	SCR-0-104	MRGV	50
November 1-2 and January 3-4, 2004	SCR-0-105	southwest	60
January 10-11, 2004	SCR-0-106	MRGV	60

(2) [RESERVED]

B. [RESERVED]

C. Only non-toxic shot may be in possession of hunters using shotguns.

D. While hunting Sandhill cranes, hunters participating in these seasons must have in their possession a special permit issued by the department.

E. Hunters who participate in the MRGV and EV seasons shall be required to check-out at designated check stations when they harvest any Sandhill cranes. Those hunters participating in the southwest seasons will be requested to check-out only at designated check stations at the end of each hunt date.

F. Hunters participating in the MRGV and EV seasons who do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a permit the following year. Hunters participating in the southwest seasons who do not submit a questionnaire within five days of the close of their November and January hunts will be considered ineligible to receive a permit the following year.

G. Applications for Sandhill crane permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. Applicants may apply for a first and second choice of seasons. A maximum of one season will be awarded to successful applicants. The deadline date for application shall be the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

H. No more than four persons may apply per application.

I. Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

J. It shall be unlawful to submit more than one application for a special MRGV, Southwest or EV sandhill crane season permit. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

K. If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish. [19.31.5.11 NMAC - Rp, 19.31.5.11 NMAC, 8-29-2003]

19.31.5.12 REQUIREMENTS AND PERMITS FOR THE EASTERN SANDHILL CRANE HUNT:

Hunters shall have in their possession a federal Sandhill crane hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail only to the Santa Fe office. Applicants shall submit their name, address, and the number of their general hunting license, or general hunting and fishing license, or small game license, or senior general hunting license, or handicapped general hunting license. There shall be no limit on the number of federal permits available for issue.

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-29-2003]

19.31.5.13 REQUIREMENTS AND PERMITS FOR BAND-TAILED PIGEON:

Hunters shall have in their possession a Band-tailed pigeon hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office

only. Applicants shall submit their name, address, and the number of their general hunting license, or general hunting and fishing license, or small game license, or senior general hunting license, or handicapped general hunting license. Permits shall be free of charge and there shall be no limit on the number of permits available for issue.

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-29-2003]

19.31.5.14 REQUIREMENTS AND PERMITS FOR YOUTH-ONLY PHEASANT HUNT AND THE SEVEN RIVERS WMA AND W.S. HUEY WMA PHEASANT HUNTS:

A. Up to 40 permits will be available for a youth-only pheasant hunt on the Seven Rivers WMA scheduled for the Saturday prior to the opening of the regular season. Up to 65 permits will be available on the Seven Rivers WMA hunt. Up to 40 permits will be available on the W.S. Huey WMA hunt.

B. Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying for this youth hunt license.

C. Applications for the PHE-0-001 Youth-only, PHE-0-002 Seven Rivers WMA and PHE -0-003 W.S. Huey WMA permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. The deadline date for application shall be the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

D. No more than four persons may apply per application.

E. Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

F. It shall be unlawful to submit more than one application for a permit for the youth-only pheasant or the special permit Seven Rivers WMA and W.S. Huey WMA pheasant hunts. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

G. If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

H. Youth hunters partici-

pating in this hunt must be accompanied by a non-hunting adult.

[19.31.5.14 NMAC - Rp, 19.31.5.14 NMAC, 8-29-2003]

19.31.5.15 REQUIREMENTS AND PERMITS FOR LESSER PRAIRIE-CHICKEN:

A. [RESERVED]

B. [RESERVED]

C. The season for the Lesser prairie-chicken is closed for the 2003-2004 season.

[19.31.5.15 NMAC - Rp, 19.31.5.15 NMAC, 8-29-2003]

19.31.5.16 FALCONRY SEASONS:

A. Open areas and season dates.

(1) 2003-2004 season, all dates are 2003 unless otherwise specified.

(a) The season for pheasants, Blue grouse, quail, Abert's squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28, 2004.

(b) The season for dove shall be statewide and shall be open September 1 through December 16.

(c) The season for Band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2004 for the southwest hunting area.

(d) The season for Sandhill crane shall be in the eastern New Mexico Sandhill crane hunt area and shall be open from October 17 through January 31, 2004.

(e) The season for any duck species and American coot during the September teal season within the central flyway portion of the state shall be open September 20-28.

(2) [RESERVED]

B. Daily bag and possession limits.

(1) Daily bag limits shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate) and possession limits shall be: pheasant-6; Blue grouse-6; quail 30 (singly or in the aggregate); tree squirrel-16 (singly or in the aggregate) as listed herein.

(2) Daily bag limit for dove, ducks, Band-tailed pigeon, and Sandhill crane shall be 3 birds (in the aggregate) and possession limits shall be 6 birds (in the aggregate) as listed herein.

C. Provisions for possession: The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert's squirrels and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those species listed herein that were legally taken during the open falconry

season.

[19.31.5.16 NMAC - Rp, 19.31.5.16 NMAC, 8-29-2003]

19.31.5.17 LEGAL HUNTING HOURS: Hunting hours, as used herein, shall mean from one-half hour before sunrise to sunset except where listed otherwise.

A. [RESERVED]

B. On state game commission owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. except for hunting September teal on Bernardo and La Joya WMAs where hunting hours are from one-half hour before sunrise to sunset; and for the special permit pheasant hunts on the Seven Rivers WMA, W.S. Huey WMA and the youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4pm.

[19.31.5.17 NMAC - Rp, 19.31.5.17 NMAC, 8-29-2003]

19.31.5.18 PARTS TO REMAIN WITH EACH BIRD UNTIL STORAGE AT PERSONAL ABODE OR IN STORAGE FACILITY: One foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or storage facility.

[19.31.5.18 NMAC - Rp, 19.31.5.18 NMAC, 8-29-2003]

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING REGULATIONS
PART 6 WATERFOWL

19.31.6.1 ISSUING AGENCY: New Mexico Department of Game and Fish.

[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 8-29-2003]

19.31.6.2 SCOPE: Hunters of Waterfowl. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.

[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 8-29-2003]

19.31.6.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 8-29-2003]

19.31.6.4 DURATION: August 29, 2003-March 31, 2004.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-29-2003]

19.31.6.5 EFFECTIVE DATE: August 29, 2003 unless later date is cited at end of individual sections.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-29-2003]

19.31.6.6 OBJECTIVE: Establishing seasons on ducks, geese, Virginia Rail, Sora, common moorhen, American coot, common snipe, and setting falconry seasons.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 8-29-2003]

19.31.6.7 DEFINITIONS: Areas, species, non-toxic shot, and possession limit defined.

A. "Central flyway" as used herein, shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

B. "Pacific flyway" as used herein, shall mean that portion of New Mexico west of the Continental Divide including the Jicarilla Apache Indian reservation.

C. "North zone" as used herein, shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway north of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

D. "South zone" as used herein, shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway south of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

E. "Nontoxic shot" as used herein, shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

F. "Possession limit" as used herein, shall mean twice the daily bag limit except where otherwise defined.

G. "Dark goose" as used herein, shall mean Canada goose or Greater white-fronted goose.

H. "Light goose" as used herein, shall mean Snow goose (including blue phase) or Ross' goose.

I. "Duck" as used herein, shall mean all species of ducks unless otherwise indicated.

[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-29-2003]

19.31.6.8 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:

A. 2003-2004 season; all dates are 2003 unless otherwise specified:

CENTRAL FLYWAY

<u>SPECIES</u>	SEASON DATES		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>	
Ducks: <u>North zone:</u>	Oct. 8	– Jan. 11, 2004	6-- which consists of no more than 5 Mallard (of which only 2 may be female Mallard); 2 Scaup; 2 Redhead; 2 Wood duck; 1 Hooded Merganser.
Pintail and Canvasback	Oct. 8	– Nov. 15	1 Pintail; 1 Canvasback may be in the bag
<u>South zone:</u>	Oct. 22	– Jan. 25, 2004	
Pintail and Canvasback	Dec. 18	– Jan. 25, 2004	1 Pintail; 1 Canvasback may be in the bag
American coot:	Same as above Zone dates		15

Common moorhen:	Oct. 11	– Dec. 19	1
Common snipe	Oct. 11	– Jan. 25, 2004	8
Virginia Rail & Sora	Sept. 20	– Nov. 28	10 daily (singly or in the aggregate)
Dark goose: (Regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 17	– Jan. 31, 2004	4
Special MRGV season *Special permit required; See information in Section 14	Jan. 17	– Jan. 25, 2004	2 (season limit of 2)
Light goose:	Oct. 17	– Jan. 31, 2004	20/80 possession

PACIFIC FLYWAY

<u>SPECIES</u>	SEASON DATES		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>	
Ducks:	Oct. 13	– Jan. 25, 2004	7-- which consists of no more than 2 female Mallard; 2 Redhead; 2 Scaup.
Pintail and Canvasback	Nov. 27	– Jan. 25, 2004	1 Pintail; 1 Canvasback may be in the bag
American coot and Common moorhen:	Oct. 13	– Jan. 25, 2004	12 daily (singly or in the aggregate)
Common snipe:	Oct. 11	– Jan. 25, 2004	8
Virginia Rail & Sora:	Sept. 20	– Nov. 28	10 daily (singly or in the aggregate)
Goose: <u>North zone:</u>	Sept. 27	– Oct. 12 and Nov. 3	3 Dark geese, 1 Light goose
		– Jan. 25, 2004	

South zone: Oct. 18 – Jan. 25, 2004 2 Dark geese, 1 Light goose

B. Light goose conservation measures: Under the director's discretion the department may implement the light goose conservation measures approved by the U.S. fish and wildlife service (USFWS). Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS.

CENTRAL FLYWAY
SEASON DATES

<u>SPECIES</u>	<u>OPEN</u>	<u>CLOSE</u>	<u>DAILY BAG LIMIT</u>
Light geese [19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-29-2003]	Feb. 01, 2004 -	Mar. 10, 2004	No bag or possession limit

19.31.6.9 FALCONRY SEASONS:

- A.** Species that can be taken, open areas, and hunting seasons:
 - (1) 2003-2004 season, all dates are 2003 unless otherwise specified:
 - (a) Duck and American coot: *Central flyway* seasons for duck and American coot shall be as follows: North zone - September 20 through September 28, October 4 - 5 (youth waterfowl days), and October 8 through January 11, 2004; South zone - September 20 through September 28, October 18-19 (youth waterfowl days), and October 22 through January 25, 2004. *Pacific flyway* seasons shall be as follows: October 11 through January 25, 2004.
 - (b) Light goose: *Central flyway* seasons shall be open October 17 through January 31, 2004. *Pacific flyway* season shall be North zone - September 27 through October 12, and October 27 through January 25, 2004; South Zone - October 11 through January 25, 2004.
 - (c) Dark goose: *Central flyway* seasons shall be open October 17 through January 31, 2004. *Pacific flyway* season shall be North zone - September 27 through October 12 and October 27 through January 25, 2004; South Zone - October 11 through January 25, 2004.
 - (d) Common snipe and Common moorhens: *Central and Pacific Flyways* seasons shall be: October 11- January 25, 2004.
 - (e) Sora and Virginia rails: *Central and Pacific Flyways* seasons shall be: September 20 – January 4, 2004.
 - (2) [RESERVED]
 - (3) [RESERVED]
 - (4) [RESERVED]
- B.** Falconry on managed waterfowl areas (WMAs).
 - (1) Falconry hunting for waterfowl shall be permitted on those portions of the WMAs open to hunting during the seasons in paragraph A in this section, except for Jackson lake WMA.
 - (2) Falconry hunting for waterfowl shall be permitted on those portions of Jackson lake WMA open to hunting during the seasons in paragraph A in this section, including that portion east of N.M. 170.
- C.** Daily bag limits: shall be three birds (in the aggregate) and possession limits shall be six birds (in the aggregate) as established herein.
- D.** Provisions for possession: the falconry hunter shall not retain nor possess any protected species of bird taken by a raptor except those species of protected birds taken during open falconry season.
[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-29-2003]

19.31.6.10 PARTS TO REMAIN WITH EACH BIRD UNTIL STORAGE AT PERSONAL ABODE OR IN STORAGE FACILITY: One fully-feathered wing or the head shall remain attached to each goose, duck, Common moorhen, and American coot taken until the bird has arrived at the personal abode of the possessor or storage facility.
[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-29-2003]

19.31.6.11 STATE WATERFOWL AREAS OPEN TO HUNTING, SPECIES THAT CAN BE HUNTED, AND DAYS HUNTING OPEN:

A. State waterfowl areas open, species that can be hunted, and days hunting open:

DAYS OF WEEK OPEN FOR HUNTING

<u>AREA</u>	<u>SPECIES</u>	<u>SUN</u>	<u>MON</u>	<u>TUE</u>	<u>WED</u>	<u>THU</u>	<u>FRI</u>	<u>SAT</u>
Bernardo WMA (See note below) (600 feet S of US-60; W of unit 7 drain)	Group 1*	X		X		X		
(600 feet S of US-60; E of unit 7 drain)	Group 1		X		X			X
La Joya WMA (south portion of refuge)	Group 1	X		X		X		
La Joya WMA (north portion of refuge)	Group 1		X		X			X
Jackson lake WMA (W of NM-170)	Group 2**		X		X			X

William S. Huey WMA	Group 2	X	X	X
Seven Rivers WMA (portion of Brantley WMA-- see specific closure in 19.31.6.15.A.3)	Group 2	X	X	X
Tucumcari WMA	Group 2	X	X	X
Salt lake and Charette lake WMAs	Group 2	X	X	X
McAllister lake WMA	Group 3***	X	X	X

*Group 1 Ducks, light geese, dark geese if in possession of a MRGV dark goose permit, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

**Group 2 Ducks, geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

***Group 3 Ducks, light geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

Note: Bernardo, and Casa Colorado WMAs will be open for light goose hunting by permit only, on the following dates: December 6, 8, 29, 31 and January 25 and 27. On these dates all of Bernardo will be closed to duck hunting. For the remaining dates of the waterfowl seasons, hunting at Bernardo WMA, south of U.S. highway 60 only shall follow the schedule described in the table above. During the light goose conservation order, designated areas north of U.S. highway 60 are open and shall follow the schedule described in the table above.

B. The wildlife management areas open during the youth waterfowl days shall be Bernardo WMA (all portions south of U.S. highway 60), all portions of La Joya WMA, Seven Rivers WMA, William S. Huey WMA, Salt lake WMA, Charette lake WMA, McAllister lake WMA and Tucumcari WMA.

[19.31.6.11 NMAC – Rp, 19.31.6.11 NMAC, 8-29-2003]

19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO AND CASA COLORADA LIGHT GOOSE HUNT:

A. The Bernardo and Casa Colorado WMAs will be open for light goose hunting by permit only on December 6, 8, 29, 31, and January 25, 27.

B. Up to 32 permits, at Bernardo WMA, and up to 32 permits, at Casa Colorado, per hunting day, will be available (except Bernardo WMA on December 29; see Section 19.31.6.13 below).

C. Applications for Bernardo/Casa Colorado light goose hunts shall be submitted on the appropriate application form. A six-dollar (\$6.00) application fee shall be required of each applicant. Up to four persons may apply per application. Applicants may designate up to three hunt choices. Only one choice may be awarded. The deadline date for application shall be on the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked by the deadline, but not delivered, will be accepted by the Santa Fe office up to five working days after that deadline.

Hunt packages for the Bernardo and Casa Colorado light goose hunts.

(B: refers to hunts on Bernardo WMA, C: refers to Casa Colorado WMA)

LTG-O-101 B-12/6 C-1/27

LTG-O-102 B-12/8 C-1/25

LTG-O-103 B-12/31 C-12/8

LTG-O-104 B-1/25 C-12/31

LTG-O-105 B-1/27 C-12/29

D. [RESERVED]

E. While hunting light geese, hunters participating in this season must have in their possession a valid hunting license and a special permit issued by the department.

F. While hunting, hunters shall have in their possession only nontoxic shot. Only 25 rounds per hunter will be allowed at the blinds.

G. Designated areas open for light goose hunting on Bernardo and Casa Colorado WMAs by permit only are Bernardo WMA and Casa Colorado WMA--all open.

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 8-29-2003]

19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT:

A. Up to 16 permits will be available for the youth-only light goose hunt at Bernardo WMA. A six-dollar fee shall be required by each applicant for each permit purchased.

B. Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11--Restrictions) for criteria qualifying an applicant for this youth hunt license.

C. Applications for the December 29 (YLG-O-101) Bernardo youth-only light goose hunt shall be submitted on the appropriate application form. A six-dollar (\$6.00) application fee shall be required of each applicant. Up to three youth hunters may apply per application. The deadline date for application shall be on the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked by the deadline, but not delivered, will be accepted by the Santa Fe office up to 5 working days after that deadline.

D. [RESERVED]

E. While hunting light geese, hunters participating in this season must have in their possession a valid hunting license and a special permit issued by the department.

F. While hunting, hunters shall have in their possession only nontoxic shot. Only 25 rounds per hunter will be allowed at

the blinds.

G. Designated areas open for light goose hunting on Bernardo WMA by permit only are--all areas.
[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-29-2003]

19.31.6.14 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE VALLEY DARK GOOSE SEASON:

A. Unlimited permits obtained at department offices will be available to hunt dark geese in a selected portion of the middle Rio Grande valley with a daily bag limit of two dark geese and a season limit of two dark geese.

B. While hunting, hunters participating in this hunt must have in their possession a special permit issued by the department.

C. [RESERVED]

D. [RESERVED]

E. [RESERVED]

F. [RESERVED]

G. [RESERVED]

H. The area open for the special dark goose season shall be Sierra, Socorro and Valencia counties.
[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-29-2003]

19.31.6.15 ADDITIONAL CLOSED AREAS: No hunting of migratory game birds shall be permitted in the following areas:

A. That portion of the Canadian river arm of Ute reservoir lying between lines running parallel to and 100 feet above the high-water marks on each side of the Canadian arm and extending from the San Miguel and Quay county line to a posted buoy line across Horseshoe Bend.

B. That portion of the stilling basin below Navajo dam lying within a line starting from N. M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N. M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

C. The Old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.
[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 8-29-2003]

19.31.6.16 LEGAL HUNTING HOURS:

A. Hunting hours, as used herein, shall mean from one-half hour

before sunrise to sunset except where listed otherwise.

B. On state game commissioned owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m.

[19.31.6.16 NMAC - Rp, 19.31.6.16 NMAC, 8-29-2003]

19.31.6.17 YOUTH WATERFOWL HUNTING DAYS:

A. Requirements for youth hunters to participate in this hunt are as follows:

(1) Youth hunters must be under 16 years old.

(2) Youth hunters must be fully licensed as required to hunt waterfowl (hunters under 16 are not required to have the federal duck stamp).

(3) An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

(4) Only ducks and coots may be taken by the youth hunter (Sandhill cranes, geese or any other waterfowl species may not be taken).

B. Season dates for youth waterfowl days:

Central flyway: North zone:
October 4 -5

South zone:
October 18-19

Pacific flyway: October 11-12

C. The bag limit for youth waterfowl days shall be the same as the regular season in the respective flyways.

[19.31.6.17 NMAC - Rp, 19.31.6.17 NMAC, 8-29-2003]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION FOOD STAMP PROGRAM

TITLE 8 SOCIAL SERVICES CHAPTER 139 FOOD STAMP PROGRAM

PART 501 TRANSITIONAL FOOD STAMP BENEFIT ELIGIBILITY

8.139.501.1 ISSUING AGENCY: New Mexico Human Services Department [8.139.501.1 NMAC - N, 09/01/2003]

8.139.501.2 SCOPE: General Public [8.139.501.2 NMAC - N, 09/01/2003]

8.139.501.3 STATUTORY AUTHORITY: The Food Stamp Program

is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the Act are contained in 7 CFR Parts 270-282. State authority for administering the Food Stamp Program is contained in Chapter 27 NMSA 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

[8.139.501.3 NMAC - N, 09/01/2003]

8.139.501.4 DURATION: Permanent [8.139.501.4 NMAC - N, 09/01/2003]

8.139.501.5 EFFECTIVE DATE: September 1, 2003 [8.139.501.5 NMAC - N, 09/01/2003]

8.139.501.6 OBJECTIVE: The objective of Transitional Food Stamp benefit assistance is to maximize the food purchasing power for and assist in the transition of TANF households that also receive food stamp benefits when the TANF household faces termination of cash assistance benefits. Transitional Food Stamp benefit assistance is authorized by the Farm Security and Rural Investment Act of 2002, also known as the "Farm Bill, at Title IV, Section 4115.
[8.139.501.6 NMAC - N, 09/01/2003]

8.139.501.7 DEFINITIONS: [Reserved] [8.139.501.7 NMAC - N, 09/01/2003]

8.139.501.8 TRANSITIONAL FOOD STAMP BENEFITS

A. Requirement: Transitional Food Stamp (TFS) benefits shall be extended to certain households that receive food stamp benefits and were receiving TANF cash assistance to meet ongoing basic needs. The food stamp household may be composed entirely of TANF recipients or may include both food stamp only and TANF recipients (a mixed household).

B. Conditions: Transitional food stamp benefits shall be extended to a household receiving food stamp benefits under the following conditions:

(1) the TANF cash assistance payment will be terminated; and

(2) the household received food stamp benefits in the same month the determination is made that TANF cash assistance will be terminated.

C. Extending transitional food stamp benefits: A food stamp household shall be eligible for TFS if the household meets any one of the following condi-

tions:

(1) Gross income exceeds TANF limit: The TANF cash assistance payment is terminated because the TANF benefit group's gross income exceeds the gross income limit for the size of the TANF benefit group.

(2) Net income exceeds TANF limit: The TANF cash assistance payment is terminated because the TANF benefit group's net income exceeds the net income limit for the size of the TANF benefit group.

(3) TANF ineligibility at recertification: The TANF cash assistance payment is terminated at recertification, and after the interview, because the TANF benefit group is determined to be ineligible to continue receiving cash assistance or the benefit group chooses not to continue receiving cash assistance for any reason.

(4) Same certification period end date: The food stamp and TANF certification period end dates are in the same month and the TANF benefit group chooses not to continue with the TANF recertification process for any reason.

(5) No TANF dependent children: The TANF cash assistance payment is terminated because there are no longer any eligible dependent children in the TANF benefit group.

(6) 60-month term limit: The TANF cash assistance payment is terminated because at least one adult in the TANF benefit group has reached the TANF 60-month term limit for receipt of cash assistance.

(7) TANF hardship extension ends: The TANF cash assistance payment is terminated because the hardship extension of TANF cash assistance ends.

(8) Term limit appeal status: The TANF benefit group has appealed the termination of cash assistance due to the 60-month term limit and the TANF benefits are terminated because the hearing decision is in favor of the department.

(9) Wage subsidy program participation: The TANF cash assistance payment is terminated because the benefit group has been accepted into the Wage Subsidy Program pursuant to 8.102.460.19 NMAC.

(10) Head of household requests closure of TANF case: The head of household requests closure of the TANF case in writing, as long as the TANF benefit group continues to reside in New Mexico.

D. Households not eligible for TFS: Certain food stamp households shall not be extended TFS if at the time the TANF cash assistance payment is terminated:

(1) a TANF benefit group is in sanction status at the third sanction level because a TANF benefit group member has

failed to comply with work requirements, child support enforcement or reporting requirements;

(2) a TANF benefit group is in sanction status at the first or second sanction level because a TANF benefit group member has failed to comply with work requirements, child support enforcement or reporting requirements;

(3) a TANF benefit group's payment is terminated because the only dependent child in the benefit group is not in compliance with school attendance requirements;

(4) a food stamp household contains an individual who is disqualified due to a failure of the individual to comply with employment and training work requirements.

[8.139.501.8 NMAC - N, 09/01/2003]

8.139.501.9 TRANSITIONAL BENEFIT PERIOD

A. Determining the transitional benefit period: The transitional benefit period shall be determined prospectively. TFS shall be issued for five months beginning in the month after the final TANF cash assistance payment is received.

B. Continuing the transitional benefit period: The five-month transitional benefit period shall continue even if:

(1) the food stamp household's certification period expires during the transitional benefit period; or

(2) the household's certification period exceeds twelve months.

C. Expiration of the transitional benefit period: The TFS household's new certification period shall expire in the fifth month of the transitional benefit period.

[8.139.501.9 NMAC - N, 09/01/2003]

8.139.501.10 DETERMINING THE TRANSITIONAL FOOD STAMP BENEFIT AMOUNT

A. Calculating the TFS benefit amount: The TFS benefit amount for the transitional benefit period shall be determined by continuing to count:

(1) all the earned income that was used to calculate the food stamp benefit amount, except that any new income that caused the TANF cash assistance to be terminated shall be excluded; and

(2) all the unearned income that was used to calculate the food stamp benefit amount, except that the TANF cash assistance payment shall be excluded.

B. Changes to the TFS benefit amount: Once the TFS benefit amount has been determined, the amount shall be issued for the five-month transitional benefit period unless:

(1) the TFS household chooses to change the TFS benefit amount or end the transitional benefit period by submitting an application for recertification; or

(2) the TFS amount is adjusted as a result of a change reported by the TFS household subject to Subsection C of 8.139.501.11 NMAC.

[8.139.501.10 NMAC - N, 09/01/2003]

8.139.501.11 REPORTING REQUIREMENTS DURING THE TRANSITIONAL BENEFIT PERIOD

A. Suspending reporting requirements for TFS households:

(1) Regular reporting households: A food stamp household that is subject to the regular ten-day reporting requirement at the time the household becomes eligible for TFS benefits shall be advised that the household is not required to report any changes during the transitional benefit period.

(2) Quarterly reporting households: A food stamp household subject to quarterly reporting at the time the household becomes eligible for TFS benefits shall be advised that the household is not required to submit a quarterly report during the transitional benefit period. The department shall suspend the quarterly reporting requirement during the TFS household's transitional benefit period.

B. Requirement to provide the TFS household with change reporting information during the transitional benefit period:

(1) A food stamp household that becomes eligible for TFS benefits shall be advised that a change in address should be reported in order to ensure that the household continues to receive notices or other mail from the department during the transitional benefit period.

(2) A food stamp household that becomes eligible for TFS benefits shall be advised that the household is not required to report any changes in the household's circumstances during the transitional benefit period.

(3) A TFS household shall be advised that the household may file an application for recertification during the transitional benefit period if a change has occurred that will most likely increase the household's food stamp benefit amount, such as, but not limited to the addition of a new household member with no income of his own or the loss of income for a household member.

C. Action on reported changes: Action shall be taken to adjust the TFS benefit amount during the transitional benefit period without requiring an application for recertification only under the following conditions:

(1) a member of the TFS household files an application for food stamp benefits on his or her own behalf; or

(2) a newborn child is added to the TFS household.

D. Requirement to file an application for recertification: A TFS household that reports a change, other than an address change or those in Subsection C above, during the transitional benefit period shall be required to file an application for recertification of eligibility.

[8.139.501.11 NMAC - N, 09/01/2003]

8.139.501.12 CONTINUING FOOD STAMP BENEFITS AFTER THE TRANSITIONAL BENEFIT PERIOD

A. A household receiving TFS shall be sent an expiration notice in the fourth month of the transitional benefit period. The expiration notice shall inform the TFS household of the expiration of the transitional benefit period and the need to reapply in the fifth month of the transitional benefit period in order to determine the household's eligibility to continue participation in the Food Stamp Program.

B. A food stamp household shall be required to file an application for recertification and to complete the recertification process in the fifth month of the transitional benefit period to determine continued eligibility to participate in the Food Stamp Program.

(1) If otherwise eligible, the food stamp household shall be assigned a new certification period beginning the month following the expiration of the transitional benefit period.

(2) A household that fails to file an application or to complete the application process in the fifth month of the transitional benefit period shall lose eligibility to continue participation in the Food Stamp Program.

[8.139.501.12 NMAC - N, 09/01/2003]

8.139.501.13 TERMINATING TRANSITIONAL FOOD STAMP BENEFITS: The TFS benefit shall be terminated if the food stamp household:

A. files an application for recertification at the end of the transitional benefit period and is either approved for a new certification period or denied continued food stamp benefits;

B. files an application for recertification during the transitional benefit period in order to change the food stamp benefit amount;

C. requests closure of the food stamp case in writing;

D. files an application for TANF cash assistance and is approved for a new certification period; or

E. moves out of state.
[8.139.501.13 NMAC - N, 09/01/2003]

History of 8.139.501 NMAC: [Reserved]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION
FOOD STAMP PROGRAM**

This is an amendment to 8.139.500 NMAC, Section 8. This amendment includes the implementation of three mandatory standard utility allowances allowed to food stamp households as a deduction from income.

8.139.500.8 BASIS OF ISSUANCE

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

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

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

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

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

Household Size	Maximum Gross Monthly Income Elderly/Disabled Separate Status at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	\$1,219	\$960	\$739	\$139
2	\$1,642	\$1,294	\$995	\$256
3	\$2,066	\$1,628	\$1,252	\$366
4	\$2,489	\$1,961	\$1,509	\$465
5	\$2,913	\$2,295	\$1,765	\$553
6	\$3,336	\$2,629	\$2,022	\$663
7	\$3,760	\$2,962	\$2,279	\$733
8	\$4,183	\$3,296	\$2,535	\$838
Each Additional Member	+ \$424	+ \$334	+ \$257	+ \$105

F. Deductions and standards:

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

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

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through 4	\$134.00
Standard Deduction for Household Size of 5	\$147.00
Standard Deduction for Household Size of 6 or more	\$168.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction Limit (per dependent)	
Under age 2	\$ 200.00
All others including elderly dependent	\$ 175.00
Standard Utility Allowance (SUA)	\$185.00
<u>Heating/Cooling Standard Utility Allowance (HCSUA)</u>	<u>\$176.00</u>
<u>Limited Utility Allowance (LUA)</u>	<u>\$ 91.00</u>
<u>Telephone Standard (TS)</u>	<u>\$ 23.00</u>
Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	\$367.00
Homeless Household Shelter Standard	\$ 143.00
Minimum Allotment for Eligible One-and Two-Person Households	\$ 10.00

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

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION
FOOD STAMP PROGRAM**

This is an amendment to 8.139.520 NMAC, Section 11. This amendment provides for the implementation of the homeless shelter standard and mandatory standard utility allowances for household receiving food stamp benefits.

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 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 shall be deducted. Excluded

income is not used for purposes of computing the earned income deduction.

(1) Computing an overissuance: The earned income deduction (EID) 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 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 shall be eligible for the medical deduction.

(3) Death: A medical expense incurred by a household member who dies 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, 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.

(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 shall not be allowed. If the expense will be paid in installments during the following certification period, the deduction shall be allowed during the appropriate number of months in the subsequent certification period.

(d) Fluctuating expenses: Fluctuating medical expenses 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.

(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 shall be based on:

(i) anticipated changes in the household's medical expenses that can 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.

(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 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 shall not be determined by averaging past due or unpaid monthly medical expenses. Such expenses shall be used only as an indicator of what can reasonably be anticipated. Medical expenses which the house-

hold 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, 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, 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, home-maker 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 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 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, 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 house-

hold 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 down payments for the purchase of a home are not allowed as shelter expense deductions. Closing costs 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 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 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 shel-

ter 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) Homeless shelter standard: A household in which all household members are defined as homeless, within the definition at paragraph (40) of Subsection A of 8.139.100.7 NMAC, shall be allowed the homeless shelter standard if the household incurs any shelter expenses at any time during the month.

(a) The homeless household may claim actual shelter expenses if the expenses exceed the homeless shelter standard and the expenses are verified. Verification standards at Subsection A of 8.100.130.15 NMAC and 8.100.130.9 NMAC shall be used to verify shelter expenses, as well as other reasonable documentation determined to establish the homeless household's actual expenses.

(b) The caseworker shall assist the homeless household in determining whether claiming the homeless shelter standard or actual expenses would be most beneficial to the household.

(c) The homeless shelter standard shall be deducted from the household's countable net income.

~~[(6)]~~ **(7) Utility expenses:**

(a) ~~Actual~~ Allowable expenses for the mandatory utility standards: Allowable expenses that may be used to determine the mandatory utility standards include the cost of home heating ~~[and]~~ or cooling; 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]~~ but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees,

taxes; and fees charged by the utility provider for initial installation of the utility.

(i) A one-time deposit is not allowed as a utility expense.

(ii) Expenses billed to a landlord or housing unit, but separately identifiable from the rent as an expense to the household, are allowable expenses.

(iii) A household shall not be allowed actual utility expenses, even if the expenses exceed the amount of the mandatory utility standard for which the household is eligible.

(iv) A household that is determined eligible for a mandatory utility standard deduction shall receive only one standard deduction during the household's food stamp certification period.

[(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 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 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 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.~~

[(e) Household Choice: ~~Households eligible for the SUA may~~

choose to use either the SUA or actual utility expenses. A household 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.]~~

(b) Mandatory heating or cooling standard: A food stamp household shall be allowed the Heating/Cooling Standard Utility Allowance (HCSUA) during the household's certification period. The HCSUA includes all utility expenses for heating or cooling the household's home. The household's heating or cooling expense must be billed separately from other shelter expenses. The HCSUA shall be allowed if the household:

(i) incurs a heating or cooling expense separate from other shelter expenses; or

(ii) receives or received a direct payment or a payment is made on behalf of the household under the Low Income Home Energy Assistance Act of

1981; or

(iii) receives or received a payment or a payment is made on behalf of the household under any other similar energy assistance program as long as the household still incurs out-of-pocket heating or cooling expenses in excess of the energy assistance provided; or

(iv) lives in a public housing unit that has central utility meters, incurs a heating or cooling expense, and the household is charged only for excess heating or cooling usage.

(c) Mandatory limited utility standard: A food stamp household shall be allowed a Limited Utility Allowance (LUA) if the household does not incur a heating or cooling expense but does incur two or more of the following expenses:

(i) electricity or fuel, for purposes other than heating or cooling;

(ii) water;

(iii) sewerage;

(iv) well and septic tank installation or maintenance;

(v) garbage or trash collection; and

(vi) one telephone.

(d) Mandatory telephone standard: A food stamp household shall be allowed the Telephone Standard if the household incurs an expense only for the telephone used by the household. The Telephone Standard shall be allowed for only one telephone charge for the residence.

G. Child support deduction: A deduction 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 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 shall be acceptable verification. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. Actual payment of child support 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 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 shall be used in the average.

(b) Household with less than three months of payment history: The department shall estimate the anticipated payments according to the obligation and discussion with the client. This anticipation 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, 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 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, A, 09/01/2003]

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

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 28 WORKFORCE
INVESTMENT ACT (WIA) PROCURE-
MENT AND CONTRACTING ACTIVI-
TIES GUIDELINES**

11.2.28.1 ISSUING AGENCY:

New Mexico Department of Labor.

[11.2.28.1 NMAC - N, 8/29/03]

11.2.28.2 SCOPE:

The state administrative entity (SAE), state workforce development board (WDB), New Mexico workforce development areas/local workforce development boards (NMWDAs/LWDBs), and other state funded and/or WIA subrecipients as applicable.

[11.2.28.2 NMAC - N, 8/29/03]

11.2.28.3 STATUTORY

AUTHORITY: The Workforce Investment Act (Pub. L. 105-220; 20 U.S.C. 9276(c)), at Title I Sections 122 and 123; 20 CFR Part 652 et al. and any amendments thereto; Section 506(c), New Mexico Workforce Development Act, New Mexico House Bill 740, Chapter 260, Laws of 1999, Forty-fourth Legislature; NMSA 1978, 9-17-5, Laws of 1984, Chapter 65, Section. 1 (New Mexico statutes 1978, chapter 13, pamphlet 29).

[11.2.28.3 NMAC - N, 8/29/03]

11.2.28.4 DURATION:

Permanent.

[11.2.28.4 NMAC - N, 8/29/03]

11.2.28.5 EFFECTIVE DATE:

August 29, 2003 unless a later date is cited at the end of a section.

[11.2.28.5 NMAC - N, 8/29/03]

11.2.28.6 OBJECTIVE:

To establish minimum state requirements for procurements and contracting conducted under the Workforce Investment Act (WIA).

The purpose of the WIA procurement process is to provide for fair and equal treatment of all persons and organizations involved in a procurement, to maximize the purchasing power or value of WIA funds, and to provide safeguards to ensure the integrity of all WIA procurements through the maintenance of a quality procurement system.

[11.2.28.6 NMAC - N, 8/29/03]

11.2.28.7 DEFINITIONS:

Refer to State Technical Assistance Guide (STAG) "Workforce Investment Act (WIA) Procurement" 10-03.

[11.2.28.7 NMAC - N, 8/29/03]

11.2.28.8 ACTION:

The SAE, WDB, LWDBs, and others involved in procuring goods and services with WIA funds shall adhere to the WIA, attendant federal regulations, applicable office of management and budget (OMB) circulars and applicable state and local laws. All procurements shall be conducted in accordance with the requirements specified in this rule. The LWDBs have the option to use their own board approved procurement procedures provided that such procurement procedures comply with applicable OMB circulars and the State Procurement Code, and applicable local laws or to adopt the procedures established in applicable State Technical Assistance Guide (STAG) "Workforce Investment Act (WIA) Procurement", and any amendments thereto, incorporated herein by reference. This STAG provides additional guidelines, procedures, forms that are not part of this rule but may be adopted by LWDBs.

A. General provisions. All entities involved in procuring goods and services with WIA funds shall prescribe and implement procurement standards to ensure fiscal accountability and prevent waste, fraud, and abuse in WIA programs in accordance with applicable federal, state and local laws, regulations and policies. Local boards and other organizations using WIA funds opting to utilize their own locally established procurement policies and procedures must submit these for review by the New Mexico department of labor job training division for conformance with applicable laws, rules and regulations, prior to implementation.

B. Application of procurement law. When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal and state regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the State Procurement Code [13-1-28 NMSA 1978], compliance with federal law or regulations

shall be compliance with the State Procurement Code.

C. Funds provided under WIA may not be used to duplicate facilities or services available with or without reimbursement from federal, state, or local sources.

D. Awards are to be made to responsible entities/organizations possessing the demonstrated ability to perform successfully under the terms and conditions of the procurement. Demonstrated ability shall be determined in accordance with the requirements contained in the WIA, the federal regulations, applicable OMB circulars and the State Procurement Code.

(1) Competition. Procurements shall be conducted in a manner that provides full and open competition.

(2) Procedures. Each local workforce development area board/recipient shall have written procedures for all procurement transactions. The NMDOL SAE STAG on this subject provides guidance on establishing local procurement policy and procedures.

(3) Conflict of interest. A conflict of interest exists when an individual, a member of the individual's immediate family, the individual's partner, or an organization that employs, or is about to employ, any of the above, has financial or other interest in the firm or organization selected for award or engage in any other activity determined by the governor to constitute a conflict of interest or the appearance or perceived conflict of interest. Local boards shall develop or adopt the SAE's written code of conduct and standards governing the performance of persons engaged in the award and administration of WIA contracts and subgrants consistent with the federal regulations. Guidance regarding the development of a code of conduct is provided in the referenced STAG.

(4) Methods of procurement. LWDBs/LWDBs shall use any one of the methods of procurement, appropriate for each procurement situation as specified in the State Procurement Code and attendant regulations [1.4.1 NMAC] to include but not be limited to request for proposals, other competitive bid procedures and sole source procurement.

(5) Procurement oversight. Each recipient and subrecipient shall conduct and document oversight to ensure compliance with the procurement standards established in the WIA, applicable federal regulations, OMB Circulars and the State Procurement Code.

(6) Procurement system. Each recipient and subrecipient shall maintain an administration system which ensures that contractors, subrecipients and vendors perform in accordance with the terms, condi-

tions and specifications of their awards. Such system shall include the maintenance of records sufficient to detail the significant history of the procurement. These records shall include, but are not limited to, rationale for method of procurement, selection of agreement type, awardee selection or rejection, and the basis for the agreement price.

(7) Contract awards. Each recipient and subrecipient agreement shall adhere to WIA, applicable OMB Circulars and the State Procurement Code in selecting and awarding contracts, grants and subgrants.

(8) Selection of one-stop operators. Consistent with 20 CFR Part 652 et al. Section 662.410, One-Stop operators may be selected through a competitive process where the One-Stop operators are not designated and certified under an agreement between local boards and a consortium of entities that includes at least three or more of the required One-Stop partners identified at Section 662.200 or under conditions described in Section 662.420 or 662.430 (WIA Section 1 21(d), 121(e) and 117(f)(2)).

(9) Selection of administrative and fiscal agents. Selection of administrative and fiscal agents by the local boards shall be by a competitive bid process in accordance with the State Procurement Code. In the event where there is only one source for the required professional service(s) these may be procured via the sole source procurement process. Such instances shall be strictly limited to those conditions specified and in, accordance with, Sections 1.4.1.53 through 1.4.1.57 of the State Procurement Code regulations.

(10) Selection of intensive services providers. Adult and dislocated worker intensive services where not provided by the One-Stop operator shall be procured through a competitive process (20 CFR 663.210) in accordance with the applicable OMB Circular A-87 for grants and contracts with state and local governments and federally recognized Indian tribal governments and A-122 applicable to non-profit organizations.

(11) Selection of youth service providers. From funds allocated under WIA Section 128 to a local area, the LWDB shall identify and award grants or contracts to eligible providers of youth services on a competitive basis, based on the recommendations of the youth council and on the criteria contained in the state workforce development plan.

(12) Sole source procurements. The use of sole source procurements should be strictly limited to these conditions specified in, and in accordance with, Sections 1.4.1.53 through 1.4.1.57 of the State Procurement Code regulations. All sole source procurements must be unanimously approved by the local board and must

receive final approval from the SAE. Conditions for use of sole source procurement for items of tangible personal property and non-professional services are specified at Section 1.4.1.54 and for professional services at Section 1.4.1.55.

(13) Protests and disputes. Recipient and subrecipients shall adhere to the procedures established in the State Procurement Code regulations to handle and resolve protests and disputes relating to their procurements. A protester shall exhaust all administrative remedies with the subrecipient before pursuing a protest at a higher level. Local workforce boards will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, protests, disputes, and claims. These standards do not relieve the contractors of any contractual responsibilities under its contracts.

(14) Violations of procurement law shall be handled in accordance with applicable state and/or federal law.

(15) Contract policy. Entities that receive grants or cooperative agreements under WIA Title I must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" which is codified at 29 CFR part 97. All entities shall maintain contract policy that describes the types of agreements used in awards. The contract policy should also include the way in which cash advances, if allowed, will be handled. The type of contract used is determined in the negotiation process. The type of contract or agreement form selected for a given procurement shall reflect the characteristics of the products or services to be acquired. It should also provide suitable assurances that costs incurred are reasonable and necessary, given the value provided; the risk entailed in the contract's performance, and current market conditions. Contracts shall contain or have appended applicable contract provisions known as the boiler plate. LWDBs may utilize their own contract formats or adopt the contract format and subrecipient provisions contained in the referenced STAG.

(16) Nondiscrimination. WIA recipients, subrecipients, contractors and subcontractors shall comply with the nondiscrimination and equal opportunity provisions of the WIA of 1988, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; the Americans with

Disabilities Act of 1990, and any amendments thereto; and all applicable requirements imposed pursuant to regulations implementing those laws. The United States department of labor and the SAE reserve the right to seek judicial enforcement of this assurance.

(17) Restrictions and certifications. WIA recipients, subrecipients, contractors and subcontractors shall comply with: the Drug-Free Workplace Act of 1998 (Pub L. 100-690, Title V, Sub Title D); Federal Restrictions on Lobbying (20 CFR 93.100); restrictions on the use of WIA funds involving sectarian activities (WIA Section 188(a)(3); and certification regarding debarment, suspension and voluntary exclusion-lower tier covered transactions (29 CFR 98, OMB Circular A-133, and Executive Order 12549).

[11.2.28.8 NMAC – N, 8/29/03]

11.2.28.9 RESCISSIONS: None. However, this rule supersedes State Information Notice (SIN) No. 39-00, dated June 5, 2000.

[11.2.28.9 NMAC – N, 8/29/03]

11.2.28.10 CONTACT ENTITY: Inquiries regarding this rule should be directed to the job training division in Santa Fe at (505) 827-6827.

[11.2.28.10 NMAC – N, 8/29/03]

11.2.28.11 DISTRIBUTION: NM state and local WDB chairpersons, SAE NMDOL legal counsel, SAE NMDOL EEO Officer, NMWDAs/LWDBs administrative staff, state WIA subrecipients, other state/WIA subrecipients, USDOL federal representative, and New Mexico records center and archives.

[11.2.28.11 NMAC – N, 8/29/03]

11.2.28.12 ATTACHMENTS: State Technical Assistance Guide (STAG) "Workforce Investment Act (WIA) Procurement" 10-03.

[11.2.28.12 NMAC – N, 8/29/03]

HISTORY OF 11.2.28 NMAC:
[RESERVED]

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

13.14.5.9 NMAC is amended to make arbitration clauses in title insurance policy forms voluntary, effective August 29, 2003.

13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:

A. All Commitments issued on New Mexico property will con-

tain each of the following numbered exceptions verbatim and in the same order stated herein:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Easements, or claims of easements, not shown by the public records.
- (3) Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.
- (4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy). NOTE: Existing inventory of preprinted forms containing the words "dower, curtesy" in standard exception number 5 may be used without penalty until existing supplies are exhausted or the words "dower, curtesy" may be deleted on preprinted forms by crossing them out.
- (6) Any titles or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to lands comprising the shores or bottoms of navigable streams, lakes, or land beyond the line of the harbor or bulkhead lines established or changed by the United States Government.
- (7) Unpatented mining claims, reservations or exceptions in patents or in acts authorizing the issuance thereof water rights, claims or title to water. NOTE: Standard Exception 7 may be modified to allow deletion of all language with the exception of the words "water rights, claims or title to water."
- (8) Taxes or assessments which are not shown as existing liens by the public records.
- (9) Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)
- (10) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of records the estate or interest or mortgage thereon covered by this Commitment.

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

C. Each Commitment shall contain the following statement: General Exceptions 1, 2, 3, 4, 6 and/or 7 may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the Company's underwriting standards for each such deletion. General Exception 5 may be deleted from the policy if the named insured in the case of an Owner's Policy, or the vestee, in the case of a Leasehold or Loan Policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. The policy to be issued pursuant to this Commitment will be endorsed or modified in Schedule B by the Company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to Schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the Company and the insured."

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

**NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

13.14.17.29 NMAC is amended to clarify certain entries in the list of transaction codes, effective August 29, 2003.

13.14.17.29 FORM 6 - TRANSACTION REPORT:

UNDERWRITERS EXPERIENCE REPORT FORM 6 - TRANSACTION REPORT For Calendar Year Ending December 31, 20__ New Mexico Experience Only					
Name of Underwriter:					
NM Form No.	Transaction code	Transaction Type	NMAC Rate Provision	No. of Transactions (1)	Premiums (2)
none	0001	Charge for Additional Chain of Title	13.14.9.16		
none	0002	Charge for Unplatted Tract of Unusual Complexity	13.14.9.16		
none	0003	Abstract Retirement Credit	13.14.9.24		
none	0004	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage With Evidence Of Priority	13.14.9.40G		
none	0005	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage Without Evidence Of Priority	13.14.9.40G		
none	0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired	13.14.10.9A		
none	0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired	13.14.10.9B		

none	0008	Survey Coverage Endorsement	13.14.10.10		
none	0009	Duplicate Original Policy	13.14.9.33		
none	0010	Navigable Streams, Lakes, etc. - Standard Exception 6	13.14.10.29		
none	0011	Permissible Modification - Standard Exception No. 7	13.14.10.35		
none	0012	Waiver of Arbitration	none		NC
none	0013	Cancellation Fee	13.14.9.19B		
1	0101	Owner's Policy	13.14.9.20		
1	0102	Owner's Policy - With Bulk Rate	13.14.9.23		
1	0103	Multiple Owner's on Same Land - Simultaneous Issue	13.14.9.32		
1	0104	Replacement Owner's Policy	13.14.9.26		
1	0110	Owner's Policy - Reissue (10% Discount)	13.14.9.35		
1	0115	Owner's Policy - Reissue (15% Discount)	13.14.9.35		
1	0120	Owner's Policy - Reissue (20% Discount)	13.14.9.35		
1	0125	Owner's Policy - Reissue (25% Discount)	13.14.9.35		
2	0201	Loan Policy - Single Issue	13.14.9.22		
2	0202	Loan Policy - Simultaneous Issue <u>with Owner's Policy</u>	13.14.9.30		
2	0203	Loan Policy - Second Mortgage or Subsequent Issue	13.14.9.36		
2	0204	Replacement Loan Policy	13.14.9.26		
2	0205	NMMFA "HELP" Program Simultaneous Issue Rate	13.14.9.34		
2	0240	Loan Policy - Substitution Rate (less than 2 years - 40%)	13.14.9.39		
2	0245	Loan Policy - Substitution Rate (more than 2 years, less than 3 - 45%)	13.14.9.39		
2	0250	Loan Policy - Substitution Rate (more than 3 years, less than 4 - 50%)	13.14.9.39		
2	0255	Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)	13.14.9.39		
2	0260	Loan Policy - Substitution Rate (more than 5 years, less than 6 - 60%)	13.14.9.39		
2	0265	Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)	13.14.9.39		
2	0270	Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)	13.14.9.39		
2	0275	Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)	13.14.9.39		
2	0280	Loan Policy - Substitution Rate (more than 9 years, less than 10 - 80%)	13.14.9.39		
3	0300	Construction Loan Policy	13.14.9.40A		
6	0600	Commitment for Title Insurance	13.14.9.19A		
7	0700	U.S. Policy, ALTA 1963	13.14.9.25		
9	0900	Notice of Availability of Owner's Title Insurance	none		NC
10	1000	Facultative Reinsurance Agreement	none		NC
11	none	<u>Correction/Multipurpose Endorsement</u>	[None] 13.14.8.8	none	NC per se
11	1101	Construction Loan Extension Endorsement	13.14.9.40B		
11	1102	Pending Disbursement Clause - Subsequent Attachment	13.14.9.40F		
11	1103	Pending Disbursement Clause - Simultaneous Insertion or Attachment	13.14.9.40F		NC
11	1104	Correction Endorsement	13.14.10.17		
11	1105	Renewal, Extension, Modification & Partial Release Endorsement.	13.14.10.20		
11	1106	Extension of Commitment for Title Insurance	13.14.9.19A		
11	1107	Conversion of Leasehold Owner's Policy to Standard Owner's Policy	13.14.9.38		
11	1108	Increase in Coverage	13.14.6.8D		
12	1200	Condominium Endorsement to Loan Policy	13.14.10.14		
13	1300	Planned Unit Development Endorsement	13.14.10.15		
14	1400	Variable Rate Mortgage Endorsement	13.14.10.12		
15	1500	Variable Rate Mortgage Endorsement (Negative Amortization)	13.14.10.12		
16	1601	Manufactured Housing Unit End. - Simultaneous Insertion or Attachment	13.14.10.13		
16	1602	Manufactured Housing Unit End. - Subsequent Attachment	13.14.10.13		
17	1700	Revolving Credit Endorsement	13.14.10.12		
18	1800	Construction Loan Policy Endorsement A	13.14.9.40D		
19	1900	Construction Loan Policy Endorsement D	13.14.9.40E		
20	2001	Leasehold Owner's Endorsement (to create policy)	13.14.10.19		NC
20	2002	Leasehold <u>Loan</u> Policy - Simultaneous Issue <u>with Owner's Policy</u>	13.14.9.31		
20	2003	Leasehold <u>Loan</u> Policy - Subsequent Issue	13.14.9.31		
20	2010	Leasehold <u>Owner's</u> Policy - Reissue (10% Discount)	13.14.9.35		
20	2015	Leasehold <u>Owner's</u> Policy - Reissue (15% Discount)	13.14.9.35		
20	2020	Leasehold <u>Owner's</u> Policy - Reissue (20% Discount)	13.14.9.35		
20	2025	Leasehold <u>Owner's</u> Policy - Reissue (25% Discount)	13.14.9.35		
21	2100	Leasehold Loan Endorsement (to create policy)	13.14.10.19		NC
22	2200	Pending Disbursement Down Date Endorsement	13.14.10.18		
23	2300	Pending Improvements Endorsement	13.14.10.23		

24	2401	Assignment of Mortgage Endorsement - Within 6 Months	13.14.10.8		
24	2402	Assignment of Mortgage Endorsement - Beyond 6 Months	13.14.10.8		
25	2500	Additional Advance Endorsement	13.14.10.11		
26	2600	Partial Coverage Endorsement	none		NC
27	2700	U. S. Policy, ALTA 1963 Down Date Endorsement	13.14.10.16		
28	2800	Non-Imputation Endorsement	13.14.10.21		
29	2900	Environmental Protection Lien Endorsement	13.14.10.22		
30	3000	Condominium Endorsement to Owner's Policy	13.14.10.24		
31	3100	Owner's Leasehold Conversion Endorsement	[13.14.10.19] 13.14.9.38		
32	3200	Coordinate and Proportionate Endorsement	none		NC
33	3300	Change of Name Endorsement	none		NC
34	3400	U.S. Policy, ALTA 1991	13.14.9.25		
36	3600	Limited Title Search Policy (LTSP)	13.14.9.27		
37	3700	Continuation Endorsement for LTSP	13.14.10.25		
38	3800	Revolving Credit, Variable Rate Endorsement For LTSP	13.14.10.26		
39	3900	Lenders' Creditors' Rights Endorsement	13.14.10.28		
40	4000	Owner's Creditors' Rights Endorsement	13.14.10.27		
41	4101	Foreclosure Guarantee Policy (80% rate)	13.14.9.28		
41	4102	Foreclosure Guarantee Policy (50% rate)	13.14.9.28		
42	4200	Foreclosure Guarantee Policy Down Date Endorsement	13.14.10.18		
43	4300	Insuring Around Endorsement	none		NC
44	4400	Revolving Credit, Increased Credit Limit Endorsement	13.14.10.30		
45	4500	Residential Limited Coverage Junior Loan Policy	13.14.9.29		
46	4600	Down Date End. to Residential Limited Coverage Junior Loan Policy	13.14.10.32		
47	4700	Revolving Credit, Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.33		
48	4800	Truth-in-Lending Endorsement	13.14. 10.31		
50	5000	Restrictions, Encroachments and Minerals Endorsement	13.14. 10.34		
51	5100	Land Abuts Street Endorsement	13.14.10.36		
52	5200	Designation of Improvements, Address Endorsement	13.14.10.37		
53	5300	Same as Survey Endorsement	13.14.10.38		
54	5400	Contiguity of Parcels Endorsement	13.14.10.39		
55	5500	Named Insured Endorsement	13.14.10.40		
56	5600	Restrictions, Encroachments, & Minerals Endorsement-Unimproved Land	13.14.10.34		
57	5700	Restrictions, Encroachments, & Minerals Endorsement-Improved Land	13.14.10.34		
58	5800	First Loss Endorsement	13.14.10.41		
59	5900	Last Dollar Endorsement	13.14.10.42		
60	6000	Loan Policy Aggregation Endorsement	13.14.10.43		

[7-1-97; 13.14.17.29 NMAC - Rn, 13 NMAC 14.3.D.30 & A, 5-15-00; A, 5-31-00; A, 7-15-02; A, 7-1-03; A, 8-29-03]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

13.14.18.10 NMAC is amended to make arbitration clauses in title insurance policy forms voluntary, effective August 29, 2003.

13.14.18.10 DELETION OF PREPRINTED TERMS, ADDITION OF UNAUTHORIZED TERMS, AND LETTERS OF INTERPRETATION OR WAIVER [WHICH] THAT CHANGE THE TERMS, PROHIBITED:

A. None of the preprinted terms (or the terms required to be printed) in a promulgated title insurance form may be deleted from such form except in the manner specifically authorized by these rules.

B. Nothing may be added to, inserted in or typed upon a promulgated title insurance form except as specifically

authorized by these rules; provided, however, that the information necessary to identify the insured, the insured's estate or interest of record, the property description, all matters of record affecting the insured's interest which are exceptions to the policy, all matters, facts and circumstances, whether or not shown by the public records, constituting a lien, claim, encumbrance, impairment or limitation upon the estate to be insured, whether arising by operation of law or by reason of no recorded information establishing the insured matters, the amount of liability of the policy and, in case of a commitment or binder, any matter constituting a requirement prior to issuance of a policy, may be inserted in the proper places in the various forms and that other information necessary to complete each form (such as the year in the tax exception clause and any required signature or countersignature) must be inserted in the form prior to its issuance.

C. Additional specific

exceptions may be added to Schedule B to except from coverage the effect of encroachments, overlaps, and physical evidence of easement and/or boundary line disputes, as revealed by a survey or inspection of the property. Additionally, a specific exception as to lack of access to the property may be taken when the search performed fails to reveal that insurable rights of access to the property exist.

D. No person, firm or organization may issue, publish or circulate a letter, memorandum or other writing which directly or indirectly modifies or waives the terms or any part of the terms of any promulgated form, nor may any person, firm or organization agree to directly or indirectly do or not do anything, the effect of which is or would be to offer insurance coverages other than those in the promulgated title insurance forms, whether the same be more, less, substitute, alternative, negative or affirmative coverages or risks, except as specifically authorized by these

rules; ~~provided~~ except that ~~as to paragraph 13 of the conditions and stipulations of NM Form 2 relating to arbitration~~ insurers shall waive, at no cost or charge to the insured, either by endorsement or language added to Schedule B of the policy, the right to demand arbitration ~~may be waived by insurers as to title insurance policies relating to mortgages on properties composed of five or more family dwelling units (multi-family mortgages) upon specific written request by lenders~~ pursuant to the conditions and stipulations of title insurance policies issued in New Mexico. ~~Such waiver shall be evidenced by an endorsement to the loan policy (or a note in Schedule B of the loan policy) waiving the company's right to demand arbitration under paragraph 13 of the conditions and stipulations of the policy.~~ The endorsement or the language added to Schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the Company and the insured."

E. In no event may any policy, endorsement, binder, commitment, letter, contract, memorandum or other writing or form issued by a title insurance underwriter or agent concerning an interest in New Mexico property contain coverages not expressly authorized by these rules and/or the Superintendent pursuant to the New Mexico Title Insurance Law. [6-16-86...3-1-92; A, 2-15-99; 13.14.18.10 NMAC - Rn, 13 NMAC 14.2.11, 5-15-00; A, 8-29-03]

NEW MEXICO SECRETARY OF STATE

This is an amendment to 1.10.22 NMAC, Sections 6 and 7.

1.10.22.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place or a new voter whose name does ~~not~~ appear on the roster and has not provided the required identification to cast a provisional ballot. The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process.

[1.10.22.6 NMAC - N, 8-15-2003, A, 8-29-2003]

1.10.22.7 DEFINITIONS:

A. "Absentee ballot register" means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

B. "Absentee provisional ballot" means the paper ballot card issued to an absent provisional voter.

C. "Absentee provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

D. "Alternate location" means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot seventeen (17) days prior to an election.

E. "County canvassing board" means the board of county commissioners in each county (Section 1-13-1 NMSA 1978).

F. "Early voter" means a voter who votes in person before election day and not by mail.

G. "Election" means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections.

H. "Marksense or optical scan ballot" means a paper ballot card used on an electronic vote tabulating system, but for the purposes of this rule is hand tallied.

I. "Precinct board" means the appointed election officials at a polling place, consolidated polling ~~area~~ place, absentee precinct or alternate site.

J. "Provisional ballot" means a marksense or optical scan paper ballot card marked by a provisional voter.

K. "Provisional ballot tally sheet" means a document prepared and used by the county clerk for counting votes cast for candidates and questions by provisional voters.

L. "Provisional ballot transmission envelope" means an envelope marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate site to the office of the county clerk.

M. "Provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

N. "Signature roster"

means the certified list of voters at a polling place which is signed by a voter when presenting himself for voting on election day.

O. "Voter" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the state of New Mexico.

[1.10.22.7 NMAC - N, 8-15-2003; A, 8-29-2003]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION****NOTICE OF PUBLIC HEARING**

In accordance with the Federal COATS Reauthorization Act of 1998, the State of New Mexico Human Services Department will hold a public hearing on Monday, September 22, 2003 at 11:00 am at the New Mexico Human Services Department Law Library, Pollon Plaza, 2009 S. Pacheco, Santa Fe, New Mexico. The purpose of the hearing is to allow public input on the State Community Services Block Grant (CSBG) State Plan.

In accordance with the Federal COATS Reauthorization Act of 1998, the State of New Mexico Human Services Department will develop a State plan to be submitted to the federal government Department of Health and Human Services, Office of Community Services, in order for the State to receive a grant or allotment for the CSBG program.

The Department proposes to implement the plan effective January 1, 2004.

Individuals wishing to testify or requesting a copy of the proposed plan should contact the Income Support Division, Food and Nutrition Services Bureau, PO Box 26507, Albuquerque, New Mexico 87125-6507, or by calling 1-800-648-7167.

Individuals not wishing to attend the hearing may send written or recorded comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing.

If you are a person with a disability and you require this information in an alternative format or you require a special accommodation to participate in any HSD public hearing, program or service, please contact the Department toll free at 1-800-648-7167, or through the New Mexico Relay System, 1-800-659-8331. The Department requests at least 10 days advance notice to provide requested formats and special accommodations.

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P. O. Box 2348
Santa Fe, New Mexico 87504-2348

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2003

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.