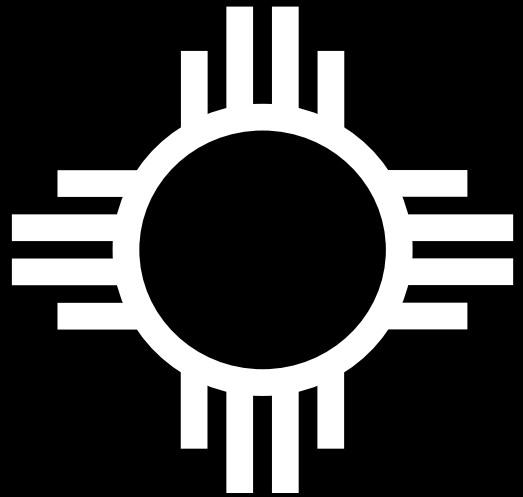


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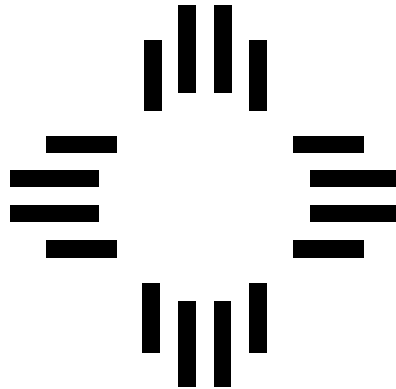


Volume XIV  
Issue Number 24  
December 30, 2003



# **New Mexico Register**

**Volume XIV, Issue Number 24  
December 30, 2003**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2003

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# New Mexico Register

Volume XIV, Number 24

December 30, 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.

#### *A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto: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 January 14, 2004, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold two public hearings in the Bernalillo County Conference Room B, 10th floor, of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearings will address:

Proposal to amend 20.11.2 NMAC, Permit Fees, and proposal to incorporate any newly-adopted 20.11.2 NMAC amendments into the New Mexico State Implementation Plan for air quality (SIP), as described below.

Proposal to amend the effective date of 20.11.20 NMAC, Fugitive Dust Control.

The proposed changes to the Permit Fees regulation include:

Changing the name of the regulation to Fees.

Changing the permit fee structure that applies to permits issued pursuant to 20.11.20 NMAC, Fugitive Dust Control. The proposed new fee structure will apply to construction permits that disturb  $\frac{3}{4}$  of an acre of land or more and a different fee structure will apply to programmatic permits for activities that involve ongoing activities or routine maintenance activities that disturb  $\frac{3}{4}$  of an acre of land or more.

Establishing definitions for classifying disturbed lands as low impact, moderate impact, or high impact in relation to the level of fugitive dust that may be produced by the disturbed land. These definitions relate to the fee schedule for programmatic permits. A definition for no impact land is also established.

Establishing a fee for petitioning for a variance.

Establishing a fee for petitioning for a hearing before the board to challenge the issuance of a permit, the terms of a permit or permit modification, the department's refusal to issue a permit, or the department's

determination of the land classification and resulting fugitive dust control permit fees due pursuant to 20.11.20 NMAC, Fugitive Dust Control.

Amending the fees charged for copies of public records.

Establishing alternative fees for emergency generators.

Establishing a fee for single booth auto body repair and painting shops.

Modifying fees associated with stationary source permits issued under 20.11.41 NMAC and modifying fees related to the potential-to-emit for stationary sources.

Changing the definition of "stationary source with de minimis emissions".

Changing the definition of "fee pollutant" by amending the particulate matter size criterion from 30 micrometers to 10 micrometers.

Establishing an application review fee for sources with a potential-to-emit equal to or greater than 1 ton per year and less than 5 tons per year.

Following the hearing, the Board will hold its regular monthly meeting during which the Board is expected to consider approval of the proposed amendments to 20.11.2 NMAC and incorporating any newly-adopted amendments into the SIP, and to consider approval of changing the effective date of 20.11.20 NMAC, Fugitive Dust Control.

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 before 5:00 pm on January 7, 2004 to: Attn: March Hearing Record, Mr. Dan Warren, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. 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 January 7, 2004. The 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](mailto:dwarren@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](mailto: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.

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

#### OPEN MEETING NOTICE

Chairwoman, Lena Trujillo-Chavez has announced that the Annual JTIP Retreat and Monthly Board Meeting for the Industrial Training Board will be held as scheduled:

**DATE:** Friday, December 19, 2003

**LOCATION:** Workforce Training Center  
Albuquerque  
Technical Vocational Institute Room 103  
5600 Eagle Rock Ave.  
NE NW Corner of Interstate 25 and Alameda

**Albuquerque, NM**  
**87113**  
**Telephone: (505) 224-**  
**5200**

**TIME: 9:00 a.m. - 3:00 p.m.**

**PURPOSE:** To review the Job Training Incentive Program's fiscal update and the Board will revise its policies (Title 5, Chapter 5, Part 50).

The Board will address and possibly take action on any other issues related to the Job Training Incentive Program.

For additional information, including a meeting agenda, please contact Therese R. Varela at (505) 827-0323. If you are disabled and require assistance, auxiliary aids and services, (Voice & TDD), and/or alternate formats in order to further your participation, please contact Cynthia Jaramillo, ADA Coordinator at (505) 827-0248. These individuals are employees of New Mexico Economic Development Department, 1100 St. Francis Dr., Santa Fe, NM 87505-4147.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER ADDITION OF A NEW PART GOVERNING CONVENIENCE STORES TO THE OCCUPATIONAL HEALTH AND SAFETY REGULA- TIONS, 11.5.6 NMAC

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on March 2, 2004 at 9:30 a.m. at Marion Hall Building, Second Floor Hearing Room, 224 East Palace, Santa Fe, New Mexico. The purpose of the hearing is to consider addition of a new Part governing Convenience Stores to the Occupational Health and Safety Regulations, 11.5.6 NMAC. The New Mexico Environment Department is the proponent these regulations.

The new Part will add provisions to the Occupational Health and Safety regulations that will provide greater safety and security for Convenience Store employees in accordance with Senate Joint Memorial 4 that was enacted this last legislative session (SMJ4, State of New Mexico, 46th Legislature, First Session 2003). The new Part is entitled "Convenience Stores" and will be added as Part 6 to Title 11, Chapter 5 NMAC.

Please note minor formatting changes in the regulations may occur. In addition, the Board may make other amendments as necessary to accomplish the purpose of providing safety and security for Convenience Store employees.

The proposed regulations may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150 Santa Fe, NM, 87505. Copies of the new regulations may be obtained by contacting Geraldine Madrid-Chavez at (505) 827-2425 or by email at [Geraldine\\_Chavez@nmenv.state.nm.us](mailto:Geraldine_Chavez@nmenv.state.nm.us). Please refer to Docket No. EIB 03-12. The proposed regulations can also be found on the New Mexico Environment Department website at [http://www.nmenv.state.nm.us/Ohtsb\\_website/ohsb-home.htm](http://www.nmenv.state.nm.us/Ohtsb_website/ohsb-home.htm). Written comments regarding the new regulations may be addressed to Ms. Madrid-Chavez at the above address, and should reference docket number EIB 03-12.

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 other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

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 or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and

- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on February 20, 2004, and should reference the name of the regulation, the date of the hearing, and docket number EIB 03-12. 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 Dr., Room N-2150  
 Santa Fe, NM 87502

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 the Personnel Services Bureau by February 17, 2004. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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.

## NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

STATE OF NEW MEXICO  
 INFORMATION TECHNOLOGY COM-  
 MISSION

IN THE MATTER OF AMENDING 1.12.5.  
 NMAC,  
 OVERSIGHT OF PROJECT AND PRO-  
 GRAM MANAGEMENT

### NOTICE OF PROPOSED RULEMAKING AND PROCEDURAL ORDER

#### I. SOLICITATION OF COMMENTS

The Information Technology Commission (Commission) issues this Notice of Proposed Rulemaking to provide an opportunity for public comment and to create a record for a decision on a proposed amend-



ment to rule: 1.12.5 NMAC, Oversight of Project and Program Management. The Commission requests written comments from all interested persons and entities on the proposed new rule.

All relevant and timely comments, including data, views, or arguments, will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order issued by the Commission.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed amended rule on or before January 4, 2004. All relevant and timely comments, including data, views, or arguments will be considered by the Commission before final action is taken in this proceeding. Written comments must be filed prior to the deadline for receipt of comments either in hard copy with the Deputy Chief Information Officer, Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501 or by electronic mail to the Deputy Chief Information Officer at [cio@state.nm.us](mailto:cio@state.nm.us). The rule number must appear on each submittal. Comments will be available for public inspection during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

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

Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

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

IT IS FURTHER ORDERED that staff of the Office of the Chief Information Officer shall cause a copy of this Notice to be published once in the *New Mexico Register*, once in the *Albuquerque Journal*, and to be posted to the Internet at <http://www.cio.state.nm.us> all on or before December 30, 2003. To obtain a copy of the proposed rule: (1) send the rule name, rule number, and a self-addressed envelope to the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501; (2) call the Office of the Chief Information Officer at 505-476-0400 with the rule name and rule number; e-mail the Deputy Chief Information Officer at [cio@state.nm.us](mailto:cio@state.nm.us) with the rule name and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail); or download the proposed rule from the Internet at <http://www.cio.state.nm.us>. The proposed rule is also available for inspection and copying during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT individuals with a disability who are in need of summaries or other types of accessible forms of the proposed rule or comments may contact the Deputy Chief Information Officer at (505)476-0400.

DONE, this 5th day of December, 2003.

INFORMATION TECHNOLOGY COMMISSION

By: Moira Gerety, Chair

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

Notice of Hearing and Proposed Rulemaking

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Department of Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501-2786, on February 4, 2004 from 10 a.m. to noon regarding the following proposed rulemaking actions:

| Rule Number                    | Rule Name   | Proposed Action |
|--------------------------------|---|-----------------|
| 6.61.2 NMAC                    | Licensure in Elementary Education, Grades K-8   | Amend Rule      |
| 6.61.6 NMAC                    | Licensure in Special Education K-12   | Amend Rule      |
| 6.63.12 NMAC                   | School Business Official  | Amend Rule      |
| 6.63.15 NMAC (Proposed NMAC #) | Licensure of School Health Assistants K-12 (Proposed rule name)                         | Adopt new rule  |
| 6.63.16 NMAC (Proposed NMAC #) | Licensure for School Licensed Practical Nurses K-12 (Proposed rule name)                | Adopt new Rule  |
| 6.63.3 NMAC                    | Licensure for Related Service Personnel Not Covered in Other Ancillary Regulations      | Amend Rule      |
| 6.64.15 NMAC (Proposed NMAC #) | Competencies for Entry-Level Family and Consumer Sciences Teachers (Proposed rule name) | Adopt new rule  |
| 6.61.9 NMAC                    | Substandard Licensure   | Amend rule      |

Interested individuals may testify at the public hearing or submit written comments to James Ball, Director of Professional Licensure, Public Education Department, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([jbball@sde.state.nm.us](mailto:jbball@sde.state.nm.us)) or telefaxed

to (505) 827-4148. Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://www.sde.state.nm.us>) or obtained from Linda Olivas, Professional Licensure Unit, Public Education Department Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6581.

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

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Department of Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501-2786, on February 4, 2004 from 1 p.m. to 4 p.m. regarding the following proposed rulemaking actions:

| Rule Number                      | Rule Name  | Proposed Action                                |
|----------------------------------|--|--|
| 6.19.1 NMAC                      | Public School Accountability: General Provisions | Amend Sections 1, 7, 8, and 9                  |
| 6.19.3 NMAC (Proposed rule name) | Unsafe School Choice Option (Proposed rule name) | Adopt new rule                                 |
| 6.30.2 MAC                       | Standards for Excellence                         | Amend Section 1 and subsection D of Section 10 |
| 6.31.2 NMAC                      | Children with Disabilities/Gifted Children       | Amend Section 1 and subsection L of Section 13 |

The proposed amendments to 6.19.1 NMAC will reflect the Public Education Department as the issuing agency, add definitions in Section 7 and amend Sections 8 and 9. The amendments are necessary to comply with the requirements of the federal No Child Left Behind Act ("NCLB"). The proposed new rule regarding Unsafe School Choice Option is necessary to meet the requirements of the NCLB.

The proposed amendments to 6.30.2 NMAC and 6.31.2 NMAC will require that student disciplinary records with respect to suspension and expulsion are transferred to a private or public elementary or secondary school in which the student seeks to enroll. The amendments are necessary to meet the requirements of NCLB. In addition, Section 1 of each rule will be amended to reflect the Public Education Department as the issuing agency.

Interested individuals may testify at the public hearing or submit written comments to Dr. William O. Blair, Deputy Director, Accountability and Information Services Division, Public Education Department, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([bblair@sde.state.nm.us](mailto:bblair@sde.state.nm.us)) or telefaxed to (505) 827-4263. Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://www.sde.state.nm.us>) or obtained from Ms. Laura Prando, Accountability and Information Services Division, Public Education Department Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-8097.

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

**NEW MEXICO WATER QUALITY CONTROL COMMISSION**

STATE OF NEW MEXICO WATER QUALITY CONTROL COMMISSION

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.4 NMAC – STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS – THE TRIENNIAL REVIEW

The New Mexico Water Quality Control Commission will hold a public hearing on February 24, 2004 and on subsequent days as necessary beginning at 9:00 a.m. each morning in the Cactus Room located on the second floor of the Paisano Building, 2968 Rodeo Park West, Santa Fe, New Mexico, to consider proposed amendments to 20.6.4 NMAC – Standards for Interstate and Intrastate Surface Waters.

The Surface Water Quality Bureau of the New Mexico Environment Department proposes amendments as part of the triennial review of New Mexico's surface water quality standards required by Section 303(c) of the Federal Clean Water Act, 33 U.S.C. Section 1313(c), which requires each state to hold a public hearing every three years for the purpose of reviewing and, as appropriate, modifying the state's surface water quality standards. The Department proposes substantial amendments in many sections of the standards. Several other petitioners are proposing amendments to the standards as well, all of which will be considered in the hearing, including, among others, Amigos Bravos, University of California, San Juan Water Commission, Elephant Butte Irrigation District, and Los Placitas Association.

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the Commission's Administrator, Geraldine Madrid-Chavez, 1190 St. Francis Drive, Room S2054, Santa Fe, New Mexico, 87502, (505) 827-2425. You may also contact John Montgomery of the Department's Surface Water Quality Bureau, 1190 St. Francis Drive, Room N2053, Santa Fe, New Mexico, 87502, (505) 476-3671. Those petitions provided electronically, including the Bureau's, have been posted on the web page of the Surface Water Quality Bureau. Go to the web site of the New Mexico Environment Department at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us); the link to the Bureau's web page is at the bottom of the Department's home page.

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and the specific Hearing Guidelines and Scheduling Order entered by the Hearing Officer appointed for this matter, Felicia Orth. Ms. Orth can be reached by contacting Ms. Madrid-Chavez. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings, the Hearing Guidelines and the Scheduling Order may be obtained from Ms. Madrid-Chavez; they are also available on the Bureau's web page.

The post-hearing process will include an opportunity for parties to submit proposed findings and conclusions and written legal argument. The Commission is expected to take up the matter for decision at its regular meeting in July 2004.

**Participation by the General Public:** Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification is required. Persons desiring to present non-technical testimony at the hearing may be heard at 11:30 a.m. each day that the hearing continues and at the end of the technical case. Public comment will also be taken in the evening of February 24 and February 25 between 6:30 and 7:00 p.m. at the auditorium in the Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico.

A member of the general public may submit a written non-technical statement for the record in lieu of oral testimony at the hearing at any time prior to the close of the hearing. If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., translator or sign language interpreter, to participate in any aspect of this process, please contact the Hearing Officer by January 23, 2004 at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502, (505) 827-2425 (TDD or TDY users please access her number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333; outside Albuquerque; 1-800-659-1779).

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules and Regulations

**NEW MEXICO ENERGY  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
AND  
NEW MEXICO TAXATION  
AND REVENUE  
DEPARTMENT**

**TITLE 3            TAXATION  
CHAPTER 13      BUSINESS        TAX  
CREDITS  
PART 20            LAND CONSERVA-  
TION INCENTIVES TAX CREDIT**

**3.13.20.1            ISSUING AGENCY:**  
Energy, Minerals and Natural Resources  
Department and the Taxation and Revenue  
Department.

[3.13.20.1 NMAC - N, 1-01-04]

**3.13.20.2            SCOPE:** This part  
applies to application and certification pro-  
cedures for administration of the land con-  
servation incentives tax credit.

[3.13.20.2 NMAC - N, 1-01-04]

**3.13.20.3            S T A T U T O R Y  
AUTHORITY:** These rules are established  
under the authority of NMSA 1978,  
Sections 7-2-18.10, 7-2A-8.9, 9-1-5(E), and  
9-11-6.2, and the Land Conservation  
Incentives Act, NMSA 1978, Sections 75-9-  
1 to 75-9-6.

[3.13.20.3 NMAC - N, 1-01-04]

**3.13.20.4            D U R A T I O N :**  
Permanent.

[3.13.20.4 NMAC - N, 1-01-04]

**3.13.20.5            EFFECTIVE DATE:**  
January 1, 2004, unless a later date is cited  
at the end of a section.

[3.13.20.5 NMAC - N, 1-01-04]

**3.13.20.6            OBJECTIVE:** The  
objective of this part is to establish proce-  
dures for certifying whether donations of  
land or interests in land to public or private  
conservation agencies made on or after  
January 1, 2004, are eligible for the land  
conservation incentives tax credit and to  
administer the land conservation incentives  
tax credit.

[3.13.20.6 NMAC - N, 1-01-04]

**3.13.20.7            DEFINITIONS:**

A. "Applicant" means a  
New Mexico taxpayer, either individual or  
corporate, who on or after January 1, 2004,  
donates or partially donates through a bar-

gain sale a perpetual fee interest or a less-  
than-fee interest in real property that  
appears to qualify as a charitable contribu-  
tion under section 170(h) of the Internal  
Revenue Code of 1986 to a public or private  
conservation agency.

B. "Bargain sale" means a  
sale where the taxpayer is paid less than the  
fair market value of the land or interest in  
land.

C. "Conservation or  
preservation purpose" means open space,  
natural area preservation, land conservation  
or preservation, natural resource or biodi-  
versity conservation including habitat con-  
servation, forest land preservation, agricul-  
tural preservation, watershed preservation,  
or historic or cultural property preservation,  
or similar uses or purposes such as protec-  
tion of land for outdoor recreation purposes.  
The resources or areas contained in the  
donation must be significant or important.

D. "Cultural property"  
means a structure, place, site, or object hav-  
ing historic, archaeological, scientific,  
architectural, or other cultural significance.

E. "Governmental body"  
means the state of New Mexico or any of its  
political subdivisions.

F. "Interest in real prop-  
erty" means a right in real property, including  
access, improvement, water right, fee sim-  
ple interest, easement and land use ease-  
ment, partial interest, mineral right, remain-  
der or future interest, or other interest in or  
right in real property that complies with the  
requirements of section 170(h)(2) of the  
Internal Revenue Code of 1986.

G. "Land" means real  
property, including rights of way, ease-  
ments, privileges, water rights, and all other  
rights or interests connected with real prop-  
erty.

H. "Less-than-fee interest"  
means an interest in land that is less than the  
entire property or all of the rights in the  
property or a nonpossessory interest in real  
property that imposes a limitation or affir-  
mative obligation such as a conservation,  
land use, or preservation restriction or ease-  
ment.

I. "National register of  
historic places" means the register main-  
tained by the United States secretary of the  
interior of districts, sites, buildings, struc-  
tures, and objects significant in American  
history, architecture, archaeology, engineer-  
ing, and culture.

J. "Public or private con-  
servation agency" means a governmental  
body or a private non-profit charitable cor-  
poration or trust authorized to do business  
in New Mexico that is organized and oper-  
ated for natural resources, land, or historic

conservation purposes and that has tax-  
exempt status as a public charity under sec-  
tion 501(c)(3) of the Internal Revenue Code  
of 1986 and meets the requirements of sec-  
tion 170(h)(3) of the Internal Revenue Code  
of 1986, and has the power to acquire, hold,  
or maintain land or interests in land.

K. "Qualified appraisal"  
means a qualified appraisal as defined in 26  
C.F.R. section 1.170A-13(c)(3) or subse-  
quent amendments.

L. "Qualified appraiser"  
means a qualified appraiser as defined in 26  
C.F.R. section 1.170A-13(c)(5) or subse-  
quent amendments.

[3.13.20.7 NMAC - N, 1-01-04]

**3.13.20.8            GENERAL PROVI-  
SIONS:**

A. Only New Mexico tax-  
payers, individual or corporate, or pass-  
through tax entities such as trusts, estates,  
partnerships, limited liability corporations  
or partnerships, limited partnerships, S cor-  
porations, or other fiduciaries, who donate  
land or interests in land in perpetuity for a  
conservation or preservation purpose to a  
public or private conservation agency are  
eligible for a land conservation incentives  
tax credit.

B. A land conservation  
incentives tax credit claimed by a pass-  
through tax entity may be used either by the  
pass-through tax entity if it is the taxpayer  
on behalf of the pass-through tax entity or  
by the member, manager, partner, share-  
holder, or beneficiary, as applicable, in pro-  
portion to his interest in the pass-through  
tax entity if the income, deductions, and tax  
liability pass through to the member, man-  
ager, partner, shareholder, or beneficiary.  
Either (a) the pass-through tax entity or (b)  
the member, manager, partner, shareholder,  
or beneficiary, but not both (a) and (b) may  
claim the land conservation incentives tax  
credit for the same donation.

C. Qualified donations  
include the conveyance, on or after January  
1, 2004, in perpetuity for a conservation or  
preservation purpose of a fee interest in real  
property or a less-than-fee interest in real  
property that appears to qualify as a charita-  
ble contribution under section 170(h) of the  
Internal Revenue Code of 1986.

D. Donations of land for  
open space for the purpose of fulfilling den-  
sity requirements to obtain subdivision or  
building permits do not qualify for the land  
conservation incentives tax credit.

E. The taxpayer may  
claim the land conservation incentives tax  
credit against the tax liability imposed by  
the Income Tax Act, in an amount up to fifty  
percent of the fair market value of the land

or interest in land that the taxpayer donates in perpetuity on or after January 1, 2004, for a conservation or preservation purpose to a public or private conservation agency.

F. The amount of the land conservation incentives tax credit a taxpayer claims shall not exceed \$100,000.00 per donation regardless of the value of the land or interest in land donated or the number of taxable years in which the taxpayer carries over any unused portion of the credit. The portion of the credit the taxpayer uses in a taxable year may not exceed the amount of the individual income or corporate income tax otherwise due. A taxpayer shall only claim one land conservation incentives tax credit per taxable year.

G. The taxpayer may carry over portions of the land conservation incentives tax credit that are unused in prior taxable years for a maximum of twenty consecutive years following the taxable year in which the land conservation incentives tax credit originated until fully expended.

H. The land conservation incentives tax credit originates in the year the taxpayer makes the donation.  
[3.13.20.8 NMAC - N, 1-01-04]

### 3.13.20.9 APPLICATION FOR CERTIFICATION:

A. A taxpayer may obtain a land conservation incentives tax credit application form from the energy, minerals and natural resources department. It shall contain the taxpayer's federal employer identification number or social security number, and, if available, the New Mexico combined reporting system (CRS) identification number.

B. An applicant shall submit an application package to the energy, minerals and natural resources department. The energy, minerals and natural resources department will accept applications beginning January 1, 2004.

C. The applicant shall submit the application package to the energy, minerals and natural resources department no later than January 31 of the calendar year following the tax year in which the credit is sought to assure time for certification to be applied to that taxable year.

D. The application package shall consist of a land conservation incentives tax credit application form, with the following required attachments:

(1) a copy of the conservation easement or deed recorded with the county clerk of the county or counties where the land is located;

(2) a qualified appraisal of the land or interest in land donated prepared by a qualified appraiser showing the fair market value of the land or interest in land;

(3) a statement from the taxpayer

certifying that the land or interest in land was not donated for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;

(4) if the taxpayer donated the land in fee, a statement from the public or private conservation agency to whom the taxpayer donated the land, that the taxpayer donated the land for conservation purposes and the public or private conservation agency will hold the land for such purposes or a copy of internal revenue service form 8283 for that donation signed by the public or private conservation agency; and

(5) if the taxpayer donated a less-than-fee interest in land:

(a) a copy of internal revenue service form 8283 for that donation signed by the public or private conservation agency;

(b) a provision in the conservation easement or deed that identifies the donation's conservation or preservation purpose or purposes;

(c) if the conservation or preservation purpose is for the preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement or deed that provides for the general public's substantial and regular use;

(d) if the conservation or preservation purpose is for the protection of a relatively natural habitat, a description of the habitat and how the conservation easement or deed protects such habitat; baseline documentation of the habitat or a provision in the conservation easement or deed that describes the habitat and its protection shall suffice;

(e) if the conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state, or local policy, a provision in the conservation easement or deed identifying such policy and identifying the significant public benefit;

(f) if the conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state, or local policy, a description of how the conservation easement or deed will provide for the general public's scenic enjoyment and identifying the significant public benefit; if there are provisions in the conservation easement or deed stating how the easement or restriction provides for the general public's scenic enjoyment and identifies the significant public benefit an additional description is not required;

(g) if the conservation or preservation purpose is for the preservation of a historically important land area, documentation, in the form of the nomination or determination of eligibility for the national

register of historic places; historically important land areas include an independently significant land area that meets the national register criteria for evaluation in 36 C.F.R section 60.4, a land area within a registered historic district that can reasonably be considered as contributing to the district's significance, and a land area adjacent to a property listed individually in the national register of historic places where the land area's physical or environmental features contribute to the property's historic or cultural integrity;

(h) if the conservation or preservation purpose is for the preservation of a certified historic structure documentation that the structure is listed in the national register of historic places or located in a registered historic district and certified by the United States secretary of the interior to the United States secretary of the treasury as being of historic significance to the district;

(i) if the taxpayer owns the mineral interest a title opinion certifying such ownership, other documentation establishing such ownership, or a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed that prohibits any extraction or removal of minerals by any surface mining method; methods of mining that have a limited, localized impact on the land and that are not irretrievably destructive of significant conservation interests may be allowed

(j) if the ownership of the surface estate and mineral interest has been separate and remains separate, a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible;

(k) a provision in the conservation easement or deed that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation purpose;

(l) a provision in the conservation easement or deed that prohibits the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requires that the conservation purposes for which the donation was originally intended continue to be carried out;

(m) a provision in the conservation easement or deed that provides that the donation of the less-than-fee interest is a property right, immediately vested in the public or private conservation agency receiving the donation, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the proper-

ty as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation purposes and judicial proceedings extinguish the easement or restrictions then the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange, or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;

(n) if the taxpayer reserves rights that if exercised may impair the conservation interests associated with the property, a provision in the conservation easement or deed that contains documentation sufficient to establish the property's condition at the time of the donation and a provision whereby the taxpayer agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes;

(o) if the donation is to a private conservation agency, a copy of that agency's 501(c)(3) certification from the internal revenue service; and

(p) if the interest in land is subject to a mortgage, a subordination agreement from the mortgage holder that it subordinates its rights in the interest in land to the public or private conservation agency to enforce the conservation or preservation purposes of the donation in perpetuity.

E. The energy, minerals and natural resources department shall return an incomplete application to the applicant.

[3.13.20.9 NMAC - N, 1-01-04]

### **3.13.20.10 APPLICATION REVIEW PROCESS AND CERTIFICATION OF ELIGIBLE DONATION:**

A. The secretary of the energy, minerals and natural resources department or designee shall review the applications in consultation with the committee established pursuant to the Natural Lands Protection Act. The secretary shall upon receipt of the application initiate consultation by sending the application to the committee members for review and comment or by calling a meeting of the committee.

B. The secretary of the energy, minerals and natural resources department or designee, after consultation with the committee, shall approve or reject an application within 60 days following receipt of the application package. If more time is required the energy, minerals and natural resources department shall notify the applicant of the reason and shall approve or reject the application as soon as possible, but no later than April 1 of the year

in which the taxpayer claims the credit.

C. If the secretary of the energy, minerals and natural resources department or designee finds that the application package is complete and the donation of land or interest in land meets the requirements of subsections C and D of 3.13.20.8 NMAC and 3.13.20.9 NMAC, the secretary shall approve the application. The energy, minerals and natural resources department's approval is given by the issuance of a letter to the applicant and the taxation and revenue department. This letter shall certify that the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in real property or a less-than-fee interest in real property that meets the requirements of the Land Conservation Incentives Act and these rules.

D. The secretary of the energy, minerals and natural resources department or designee shall reject an application that is not complete or correct, or does not meet the criteria in subsections C and D of 3.13.20.8 NMAC and 3.13.20.9 NMAC. The energy, minerals and natural resources department's letter shall state the specific reasons why the application was rejected. If the secretary of the energy, minerals and natural resources department or designee rejected the application because it was incomplete, incorrect, or did not meet the requirements of subsections C and D of 3.13.20.8 NMAC and 3.13.20.9 NMAC, the applicant may resubmit the application package for the rejected donation of land or interest in land with the complete or correct information or additional information that addresses the requirements the donation did not meet. The energy, minerals and natural resources department shall place the resubmitted application in the review schedule as if it were a new application.

[3.13.20.10 NMAC - N, 1-01-04]

### **3.13.20.11 FILING REQUIREMENTS:**

A. The claim for the land conservation incentives tax credit shall consist of the letter from the energy, minerals and natural resources department certifying that the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in real property or a less-than-fee interest in real property that meets the requirements of the Land Conservation Incentives Act and these rules.

B. The taxpayer shall submit the claim on a claim form developed by the taxation and revenue department. The claim form shall accompany the New Mexico personal income, corporate, or pass

through entity income tax return for the year in which the donation was made or in subsequent tax years not to exceed twenty consecutive years following the taxable year in which the land conservation incentives tax credit originated for unused portions of the tax credit.

C. A taxpayer who has both a carryover credit and a new credit derived from a qualified donation in the taxable year for which the return is being filed shall first apply the amount of carryover credit against the income tax liability. If the amount of liability exceeds the carryover credit, then the current year credit may be applied against the liability.

D. If the taxpayer donated a portion of the land or interest in land's value, but was paid for the remaining fair market value of the land or interest in land, the taxpayer may claim only the land conservation incentives tax credit on that portion of the value that was donated.

E. A taxpayer claiming a tax credit pursuant to the Land Conservation Incentives Act shall not claim a credit pursuant to a similar law for costs related to the same donation.

[3.13.20.11 NMAC - N, 1-01-04]

### **HISTORY OF 3.13.20 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:**  
[RESERVED]

## **NEW MEXICO DEPARTMENT OF GAME AND FISH**

**This is an amendment to 19.31.8 NMAC, Section 22. Effective 12-30-2003.**

### **19.31.8.22 BEAR (2004-2005):**

A. The bear seasons shall be as stated below; open areas are GMU's 4, 5, 6, 7, 8 (bow only in the Sandia ranger district of the Cibola ranger district of the Cibola national forest ), 9 (including the Marquez and Water canyon WMA's), 10, 12, 13, 14, (bow only in the Sandia ranger district of the Cibola national forest), 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, 27, 34, 36, 37, 38, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 during the seasons, bag limits and restrictions listed below. Dogs shall not be used to pursue bear in any wildlife management area (WMA) as prescribed in 19.30.4 NMAC.

(I) Bow only bear season shall be Aug. 28-Sept. 19 in all zones (except Sargent, William A Humphries and Elliott Barker/Colin Neblet wildlife management areas). No dogs shall be used to pursue bear during bow seasons.

(2) Any legal weapon season for bear shall be:

(a) Aug. 16-Aug. 25 in zones 2, 5, and 6; Sept. 27-Nov. 15, in zones 1, 2, 3; ~~5 and 6~~ Sept. 27- Nov. 30 in zones 5 and 6. Dogs may be used to pursue bears during the time frames and zones listed above.

(b) Oct. 15-Nov. 15 in zone 4 (GMU's 8 and 14, bow only in the Sandia ranger district of the Cibola national forest). Dogs are required and the bag limit shall be one male bear except any cub less than a year old.

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

(a) August 1-31, BER-1-101, 10, Sargent WMA.

(b) August 1-31, BER-1-102, 5, William A. Humphries WMA.

(c) August 1-27, BER-1-103, 12, Elliot Barker/Colin Neblett WMA's.

(4) The Valle Vidal area is closed to bear hunting except to any licensed bear hunter who is a recipient of a rifle or muzzle loader for the Valle Vidal area may harvest one bear during their allotted elk hunt period. Legal weapons for taking bear in the Valle Vidal area shall be the legal weapon for the corresponding elk hunt. Dogs shall not be allowed to pursue bear in the Valle Vidal area.

**B.** The harvest limit for each bear zone is indicated below; if either the total limit (first number) or female sub-limit (italicized number) is reached the bear zone will close 72 hours thereafter. Bears taken from the Sargent WMA and William A. Humphries WMA in zone 1 or the Elliot Barker/Colin Neblett WMA's in zone 2 shall not count towards the harvest objective in that zone after the harvest limit has been reached.

(1) Zone 1, [~~77/49~~] 65/32 GMU's 4, 5, 6, 7, 51, and 52.

(2) Zone 2, [~~156/101~~] 130/59 GMU's 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57 and 58.

(3) Zone 3, [~~37/24~~] 18/10 GMU's 9 and 10.

(4) Zone 4, [~~8/5~~] 13/6 GMU's 8 and 14.

(5) Zone 5, [~~70/45~~] 75/45 GMU's 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27.

(6) Zone 6, [~~35/22~~] 35/19 GMU's 34, 36, 37 and 38.

**C.** Bag limit shall be one bear except any female accompanied by a cub or cubs, and except any cubs less than a year old, unless otherwise indicated.

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

hunting bear.

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

[19.31.8.22 NMAC - Rp 19.31.8.22 NMAC, 4-1-2003; A, 11-26-2003; A, 12-30-2003]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**This is an amendment to 8.102.100 NMAC, Sections 7 and 8. The definition of regular reporting is revised and a new definition of semiannual reporting is adopted. A new acronym for semiannual reporting is adopted.**

### 8.102.100.7 DEFINITIONS

#### A. Definitions A-L:

(1) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(2) **Attendant:** means an individual needed in the home for medical, house-keeping, or child care reasons.

(3) **Authorized representative:** means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

(4) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(5) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(6) **Benefit group:** means a pregnant woman or a group of people that includes a dependant child, all of that dependant child's full, half, step- or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.

(7) **Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous

with issuance month defined below.

(8) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(9) **Capital gains:** means proceeds from the sale of capital goods or equipment.

(10) **Cash assistance:** means cash payments funded by the Temporary Assistance for Needy Families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(11) **Certification:** means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(12) **Certification period:** means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.

(13) **Collateral contact:** means an individual or agency designated by the benefit group to provide information concerning eligibility.

(14) **Conciliation process:** means a 30- day process during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

(15) **Date of entry/admission:** means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(16) **Department:** means the human services department.

(17) **Dependent child:** means a natural child, adopted child, stepchild or ward who is:

(a) seventeen years of age or younger;

(b) eighteen years of age and is enrolled in high school; or

(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education (SDE).

(18) **Director:** means the director of the income support division.

(19) **Diversions payment:** means



a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

**(20) Documentation:** means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

**(21) Earned income:** means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

**(22) Education works program (EWP):** provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

**(23) Emancipated:** means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

**(24) Encumbrance:** means debt owed on property.

**(25) Equity value:** means the fair market value of property, less any encumbrances owed on the property.

**(26) Expedited services:** ~~The~~ means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the FSP.

**(27) Fair hearing:** ~~An~~ means an administrative proceeding which a claimant and/or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

**(28) Fair market value (FMV):** means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

**(29) Federal act:** means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

**(30) Federal fiscal year:** October 1 through September 30 of the calendar year.

**(31) Federal poverty guidelines:**

means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

**(32) Food Stamp Act:** the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

**(33) General assistance (GA) benefit group:** means a benefit group in which all members receive cash assistance financed by state or local funds.

**(34) Government entity:** includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

**(35) Gross income:** ~~The~~ means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

**(36) Gross income test (85% test):** for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85% of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

**(37) Head of household:** ~~The~~ means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker.

**(38) Immigrant:** means alien as defined in the federal act.

**(39) Immigration and naturalization service (INS):** a division of the U.S. department of justice.

**(40) Impairment:** means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical and/or psychiatric process. To evaluate physical and/or mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

**(41) Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

**(42) Initial month:** means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified follow-

ing a break in participation of one calendar month or longer.

**(43) Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

**(44) Institution of higher education:** means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

**(45) Institution of post-secondary education:** means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

**(46) Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

**(47) Issuance month:** means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

#### B. Definitions M-Z:

**(1) Medicaid:** medical assistance under title XIX of the Social Security Act, as amended.

**(2) Minor unmarried parent:** means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

**(3) Month of approval:** means the month the action to approve a benefit group for cash assistance is taken.

**(4) Net income tests:** means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

**(5) Net monthly income:** means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

**(6) Non-benefit group members:** means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

**(7) Notice of adverse action**

**(NOAA):** means a written notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Participants have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

**(8) Overissuance:** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

**(9) Parent:** means natural parent, adoptive parent, stepparent or legal guardian.

**(10) Participant:** means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

**(11) Payment standard:** means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction and/or recoupment.

**(12) Permanent total disability:** means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

**(13) Person:** means an individual.

**(14) Project area:** means the geographic area designated to a county office that is responsible for the administration of the department's programs.

**(15) Prospective budgeting:** means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

**(16) Quarterly reporting:** means a reporting requirement that allows a 12-month certification period and requires a benefit group to submit a report form every third month during a certification period.

**(17) Real property:** means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

**(18) Recertification:** means a complete review of all conditions of eligibility which are subject to change and a

redetermination of the amount of assistance payment for an additional period of time.

**(19) Recipient:** means a person receiving cash assistance benefits (same as a participant).

**(20) Refugee:** means a lawfully admitted individual granted conditional entry into the United States.

**(21) Regular reporting:** means a reporting requirement ~~[in which a benefit group is not required to meet quarterly reporting requirements, and must report changes within 10 days of the date the change becomes known]~~ that requires a participating household to report a change within ten days of the date a change becomes known to the household.

**(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.**

**(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.**

**(22) Resource standard:** means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

**(23) Retrospective budgeting:** means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

**(24) Resource planning session:** means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

**(25) Secretary:** means the secretary of the department.

**(26) Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

**(27) Semiannual reporting:** means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a food stamp semiannual report is due.

**(27) (28) Services:** means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to

assist transition into employment.

~~(28)~~ **(29) Shelter for battered women and children:** means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

~~(29)~~ **(30) Single-parent benefit group:** means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

~~(30)~~ **(31) Sponsor:** means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

~~(31)~~ **(32) Sponsored alien:** means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

~~(32)~~ **(33) Standard of need:** means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

~~(33)~~ **(34) State-funded alien eligible:** means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

~~(34)~~ **(35) Supplemental security income (SSI):** means monthly cash payments made under the authority of:

**(a)** Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

**(b)** Section 1616(a) of the Social Security Act; or

**(c)** Section 212(a) of P.L. 93-66.

~~(35)~~ **(36) Temporary total disability:** means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

~~(36)~~ **(37) Two-parent benefit group:** means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

~~(37)~~ **(38) Term limits:** means NMW assistance (cash benefits and sup-

portive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

**[38] (39) Unearned income:** means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

**[39] (40) Vehicle:** means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not mean boats, trailers or a mobile home used as the principal place of residence.

**[40] (41) Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application.

**[44] (42) Wage subsidy program:** means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 1/1/2004]

**8.102.100.8 ABBREVIATIONS AND ACRONYMS**

**A. Abbreviations and acronyms**

- (1) **AFDC:** aid to families with dependent children (replaced by TANF effective July 1, 1997)
- (2) **ARSCH:** adult residential shelter care home
- (3) **BG:** benefit group
- (4) **BIA:** bureau of Indian affairs
- (5) **BIA-GA:** bureau of Indian affairs-general assistance
- (6) **CA:** cash assistance
- (7) **CE:** categorical eligibility or categorically eligible
- (8) **CFR:** code of federal regulations
- (9) **CS:** child support
- (10) **CSED:** (HSD) child support enforcement division
- (11) **CYFD:** (New Mexico) children youth & families department
- (12) **DOH:** (New Mexico) department of health

- (13) **DOL:** department of labor
- (14) **DOT:** dictionary of occupational titles
- (15) **E&T:** employment and training (food stamp work program)
- (16) **EBT:** electronic benefit transfer
- (17) **EI:** earned income
- (18) **EW:** eligibility worker (now FAA)
- (19) **EWP:** education works program
- (20) **FAP:** financial assistance program
- (21) **FAA:** family assistance analyst (formally ISS)
- (22) **FFY:** federal fiscal year
- (23) **FMV:** fair market value
- (24) **FNS:** food and nutrition service (previously FCS)
- (25) **FPL:** federal poverty level
- (26) **FSP:** food stamp program
- (27) **GA:** general assistance
- (28) **GED:** general equivalency degree
- (29) **HHS:** (U.S. dept. of) health and human services
- (30) **HSD:** (New Mexico) human services department
- (31) **HUD:** (U.S. dept. of) housing and urban development
- (32) **IDA:** individual development account
- (33) **INS:** (U.S.) immigration and naturalization service
- (34) **IPV:** intentional program violation
- (35) **IRP:** individual responsibility plan
- (36) **IRU:** incapacity review unit
- (37) **ISD:** (HSD) income support division
- (38) **ISD2:** integrated services delivery for ISD
- (39) **ISS:** income support specialist (now FAA)
- (40) **JTPA:** Job Training Partnership Act (now WIA)
- (41) **LIHEAP:** low income home energy assistance program
- (42) **LITAP:** low income telephone assistance program
- (43) **MAD:** (HSD) medical assistance division
- (44) **MVD:** (New Mexico) motor vehicle division
- (45) **NADA:** national automobile dealers association
- (46) **NMAC:** New Mexico Administrative Code
- (47) **NMW:** New Mexico works
- (48) **NOAA:** notice of adverse action
- (49) **POS:** point of sale
- (50) **QC:** quality control
- (51) **QR:** quarterly reporting or

- quarterly reporters
- (52) **RR:** regular reporting or regular reporters
- (53) **RRP:** refugee resettlement program
- (54) **SAVE:** systematic alien verification for entitlements
- (55) **SE:** self employment
- (56) **SR:** semiannual reporting
- ~~(56)~~ **(57) SSA:** social security administration
- ~~(57)~~ **(58) SSI:** supplemental security income
- ~~(58)~~ **(59) SSN:** social security number
- ~~(59)~~ **(60) TANF:** temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act)
- ~~(60)~~ **(61) UCB:** unemployment compensation benefits
- ~~(61)~~ **(62) UEI:** unearned income
- ~~(62)~~ **(63) USDA:** United States department of agriculture
- ~~(63)~~ **(64) VA:** veterans administration
- ~~(64)~~ **(65) WIA:** Workforce Investment Act
- ~~(65)~~ **(66) WID:** work incentive deduction
- ~~(66)~~ **(67) WPA:** work participation agreement

**B. [Reserved]**

[8.102.100.8 NMAC - N, 07/01/2001; A, 02/14/2002; A, 01/01/2004]

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

**This is an amendment to 8.102.110 NMAC, Section 11. This amendment repeals the quarterly reporting provision and implements a semiannual reporting provision for certain food stamp households.**

**8.102.110.11 INTERVIEWS**

**A. Application interview:** All applicants shall be interviewed in person at the local office or, when circumstances warrant, at another place reasonably accessible and agreeable to both the applicant and the caseworker. The applicant may bring any individual to the interview.

**B. Office interview waivers:** Waiver of the requirement that the interview be conducted in the ISD office shall be determined on a case-by-case basis for any individual who is unable to appoint an authorized representative, has no one able to come to the office because of transportation difficulties, or similar hardships which the county office manager decides warrant a waiver of the office interview.

These hardship conditions include, but are not limited to: illness, care of benefit group member, prolonged severe weather, or work hours which prevent an in-office interview during work hours.

**C. Alternatives to office interviews:** If an office interview is waived, the caseworker shall conduct a telephone interview or a home visit. Home visits shall be scheduled in advance with the benefit group as provided for at 8.100.180.17 NMAC. Waiver of the office interview in and of itself shall not be justification for extending the eligibility determination deadlines.

**D. Scheduling interviews:** An interview shall be scheduled upon receipt of the application. The interview shall take place within 10 working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

**E. Missed interviews:** If an applicant fails to appear for the first interview, the applicant shall be notified of the missed interview. The applicant shall be responsible for scheduling a second appointment. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall not be denied until the 30th day (or the next workday if the 30th is not a workday) after the application was filed.

**F. Purpose and scope of interview**

(1) Prior to approval there shall be a face to face interview with the applicant. The purpose and scope of the interview shall be explained to the applicant. The interview is an official and confidential discussion of benefit group circumstances between the applicant and the caseworker. It is intended to provide the applicant with information regarding the work program, child support benefits and requirements, the temporary nature of the program, eligibility requirements, and to provide the caseworker with the necessary facts to make an accurate eligibility determination. In addition, the interview allows the caseworker to explore and clarify unclear or incomplete information reported on the application.

(2) For cash assistance cases, at initial application, a brief history shall be required in the case narrative explaining the circumstances, which led to the application. The narrative shall include information clearly describing the child's situation with respect to child support from a non-custodial parent or parents.

**G. Applicant information:** During the course of the interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy. The interviewer shall tell the applicant about the following:

(1) services available and requirements which must be met under the cash assistance program and the child support enforcement programs;

(2) school attendance and reporting requirements;

(3) complaint and hearing procedures;

(4) work program procedures;

(5) work requirements;

(6) application processing standards;

(7) procedures in cases of overpayment or underpayment;

(8) responsibility to report changes;

(9) non-discrimination policy and procedures;

(10) timeliness standards; and

(11) [~~Quarterly~~] semiannual reporting requirements.

[8.102.110.11 NMAC - Rp 8.102.110.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**This is an amendment to 8.102.120 NMAC, Sections 9 and 11. This amendment repeals the quarterly reporting requirement for TANF households and implements a semiannual reporting requirement.**

### 8.102.120.9 ELIGIBILITY REVIEWS

#### A. Follow-up reviews:

(1) A follow-up review shall be scheduled during a certification period whenever information becomes known to the county office indicating a possible change in a benefit group's circumstances that may affect eligibility or payment amount.

(2) Review of a specific condition may be made by home visit, office visit, third party contacts or correspondence as needed.

(3) Circumstances which may require follow-up review include, but are not limited to:

(a) in NMW, exemption from work requirements;

(b) in GA, disability according to the recommendation of the physician or the IRU;

(c) school attendance of children age 6 or older;

(d) any other anticipated change in circumstances which will require a change of grant during a certification period.

#### B. Recertification:

(1) Cash assistance shall be approved for a fixed certification period at the end of which the assistance shall be terminated.

(2) The recertification shall consist of a complete review of all conditions of eligibility; determination of eligibility for an additional period of time and redetermination of the amount of assistance payment. The recertification requires a redetermination of eligibility on those conditions that are subject to change. There shall be a prospective determination beginning the month following the month the certification expires.

(3) The caseworker shall ensure that CSED has been notified of all pertinent information regarding any non-custodial parent who has a child in the benefit group, including but not limited to the current address and work place of the non-custodial parent.

(4) **Conditions not subject to change:** The caseworker reviews documentation of conditions not subject to change. If the record does not contain satisfactory evidence, additional verification shall be obtained.

(5) **Work program:** The caseworker shall give information to the NMW recipients about earned income incentives, assistance through the transitional child care program, medicaid transitional benefits, and work program requirements, opportunities and services. Work program participation shall be reviewed.

(6) **Need and payment determination:** The caseworker shall obtain current information about family and benefit group income, resources, and circumstances, to determine financial need and amount of payment.

(7) **Change reporting:** The caseworker shall review with the client the possible changes in circumstances which must be reported if they occur.

**C. Certification scheduling:**

(1) Each case must have eligibility and payment reviewed at least once during the period specified for that category. Cash assistance cases, which also receive food stamps, shall be recertified at the same time the food stamp certification is completed.

(2) The certification period shall not exceed the following standards:

(a) **Regular reporting benefit groups:** A benefit group not subject to [~~Quarterly~~] semiannual reporting requirements shall be certified.

(i) every six months or less for: 002 - NMW, 005 - GA, 008 - GA, 009 - GA;

(ii) every 12 months for: 010 - state supplement for SSI recipi-

ents in residential care.

(iii) eight months for:  
019 - RRP

**(b) [Quarterly] Semiannual reporting benefit groups:** Certification provisions that apply to a NMW benefit group subject to [Quarterly] semiannual reporting are set forth at Subsection A of 8.102.120.11 NMAC.

**(3) [The] Except for cases assigned to semiannual reporting,** the caseworker shall have full discretion to make the certification period less than the maximum time interval if changes in circumstances affecting eligibility are probable, family circumstances are questionable, when it is necessary in the interest of good caseload management, or to coincide with a food stamp certification.

**D. Interview:**

(1) A face to face interview between the caseworker and the specified relative/caretaker shall take place at least once a year in connection with a recertification, with the exception of medicaid categories.

(2) The interview must be with the client himself, unless the client's physical or mental condition makes the interview impossible or inadvisable. See 8.100.130 NMAC for instructions on obtaining information.

(3) To help a client report changes that may affect the client's eligibility or amount of payment, the caseworker shall make available a change report form upon request, which the client may use to notify the county office of changes in circumstance.

**E. Scheduling recertification reviews:** The certification period end date shall be scheduled for the appropriate interval indicated in Subsection C of 8.102.120.9 NMAC, starting with the initial month of eligibility, or the month following the month in which previous certification expired.

**F. Exchange of information with SSA:**

(1) If information received during any eligibility review indicates that a recipient of NMW or GA may be eligible for supplemental security income (SSI) benefits, (this includes children and adults who appear disabled, and needy adults over 65), the caseworker shall promptly refer the recipient to the social security administration district office for application. An individual found eligible for SSI must participate in that program.

(2) During the review process, the caseworker will sometimes learn information relevant to the eligibility of a family member who is a SSI recipient. If there is a clear indication that a SSI recipient's countable income exceeds the maximum allow-

able under the SSI program, the discrepancy shall be reported to the social security administration (SSA) district office. SSA shall also be notified when it appears that the resources of an SSI recipient exceed SSI program standards.

[8.102.120.9 NMAC - Rp 8.102.120.9 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004]

**8.102.120.11 [QUARTERLY REPORTING:** Quarterly Reporting is a reporting requirement for certain benefit groups that receive NMW cash assistance.

**A. Certification Period:** A benefit group subject to Quarterly Reporting:

(1) Shall be assigned a 12 month certification period or a certification period to match the Food Stamp certification period if less than 12 months.

(2) Shall remain subject to Quarterly Reporting throughout the certification period.

**B. Quarterly Reporting Benefit Groups:** The Quarterly Reporting requirements shall apply to a benefit group:

(1) with earned income;

(2) with a recent history of earned income, defined as:

(a) a member who has had employment in the past 6 months; or

(b) a member who is currently receiving Unemployment Compensation Benefits.

(3) subject to Quarterly Reporting requirements in the Food Stamp Program.

**C. Benefit Groups Excluded from Quarterly Reporting:** The Quarterly Reporting Requirements shall not apply to:

(1) a migrant and seasonal farm worker benefit groups;

(2) a benefit group in which all members are homeless;

(3) a benefit group with no earned income or no recent history of earned income; and

(4) a benefit group whose only income is from self employment.

**D. Transition to/from Quarterly Reporting:**

(1) A household shall be transitioned to or from the Quarterly Reporting requirement at application or recertification.

(2) A household whose status changes to Quarterly Reporting because of a change in household composition shall be transitioned to Quarterly Reporting effective the month following the month the change is reported.

(a) A household whose certification period is less than 12 months at the time the household's status changes to Quarterly Reporting shall be assigned a 12-

month certification period beginning with the first month of the previous certification period. The household shall be subject to Quarterly Reporting for the remainder of the certification period.

(b) A household whose certification period is for longer than 12 months at the time the household's status changes to Quarterly Reporting shall be subject to Quarterly Reporting for the remainder of the assigned certification period.

**E. Quarterly Reporting Requirement:** The benefit group shall be required to report at intervals set forth in Subsection G of 8.102.120.11 NMAC and verify:

(1) a change in benefit group composition, whether a member has moved in or out of the home, and the date the change took place;

(2) money from employment;

(3) unearned income;

(4) purchase of a vehicle;

(5) opening of a savings or checking account;

(6) resources which exceed the \$1500 liquid or \$2000 non-liquid resource limit;

(7) dependent care expense; and

(8) change in residence.

**F. Budgeting Methodology for Quarterly Reporting:**

(1) **Initial Application:** Prospective budgeting shall be used for an applicant benefit group at initial application and at recertification as set forth at 8.102.500.9 NMAC.

(2) **Prospective Budgeting:**

(a) Methodology for determining eligibility and payment for processing a Quarterly Report is specified in this Subsection.

(b) Eligibility for cash assistance programs is determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition.

(c) Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

(3) **Changes in Benefit Group Composition:** A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

(4) **Anticipating Income:** In determining the benefit group's eligibility and payment amount, the income already received and any income a benefit group expects to receive during the certification period shall be used.

(a) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(b) Actual income shall be calcu-

lated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(e) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(d) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(e) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

#### **(5) Earned Income:**

(a) Income from the month prior to the month the Quarterly Report is due shall be used to project monthly income, provided that the income is expected to continue.

(i) If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used.

(ii) If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(b) None of the methods described above may give the most accurate estimate of monthly earnings due to unique circumstances which may occur. In such cases, the caseworker shall use whatever method gives the most accurate estimate of earnings.

(c) An income projection shall be considered valid for the period between when Quarterly Reports are due.

**(6) Income Received Less Frequently than Monthly:** The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

**(7) Contract Income:** A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis. Contract income that is annualized shall only be verified when a new contract is established.

**(8) Using Exact Income:** Exact income, rather than averaged income, shall be used if income is received more frequently than weekly.

#### **(9) Self-Employment:**

(a) Determination of self-employment income is set forth at 8.102.520.11 NMAC and Subsection B of 8.102.520.12 NMAC. Verification standards for business and self-employment income are set forth at Paragraph (2) of Subsection B of 8.100.130.14 NMAC.

(b) A benefit group subject to Quarterly Reporting requirements and a member's self-employment is annualized, shall not be required to report changes in the self-employment income. Only the income received from other sources shall be subject to Quarterly Reporting requirements as set forth in this section.

(c) If significant changes have occurred because of a substantial increase or decrease in business such that averaged income will not accurately reflect the self-employed individuals' income, the self-employment income shall be calculated on the basis of anticipated, not prior, earnings.

(d) A benefit group subject to Quarterly Reporting Requirements and the self-employment is not annualized shall be subject to reporting self-employment income on the Quarterly Report.

(i) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year.

(ii) If the self-employment enterprise has been in operation for such a short time that there is insufficient information to make a reasonable projection, the benefit group shall be required to report income at shorter intervals until there is enough information to make a longer projection of anticipated income.

**(iii) Seasonal Income:** Self-employment income that is intended to meet the benefit group's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

**(c) Determining Monthly Business or Self-Employment Income:** For the period of time over which self-employment income is averaged, the individual's monthly self-employment income is determined by adding all self-employment income, including capital gains, and excluding allowable costs of producing the self-employment income, and dividing the resulting self-employment income by the number of months over which the income will be averaged.

(f) Benefit groups who fail to provide verification of an allowable deduction with the Quarterly Report shall not be allowed the deduction. The caseworker shall process the report if all mandatory verification has been provided.

**(10) Unearned Income:** For purposes of anticipating future income, unearned income from the month prior to the month the report is due shall be used, provided that the income is expected to continue.

**(11) Use of Conversion Factors:** Conversion factors shall be used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equally for the months in the certification period or the Quarterly Reporting period.

(a) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.

(b) Income received weekly shall be multiplied by 4.3.

(c) Income received biweekly shall be multiplied by 2.15.

**(12) Rounding of Income When Using Conversion Factors:** Averaged income shall be rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

#### **G. Time Limits for Submission and Processing a Quarterly Report**

(1) The first month of the Quarterly Report period shall begin in the month of approval or the first month of the certification period.

(2) The Quarterly Report form shall be mailed to the benefit group in the month prior to the date the report is due. A cash assistance benefit group also receiving Food Stamps subject to the Quarterly Reporting requirement in the Food Stamp Program shall be assigned a Quarterly Reporting period coinciding with the Quarterly Reporting time periods established in the Food Stamp Program.

(3) A benefit group shall be required to return a completed Quarterly Report by the fifth calendar day of the month the Quarterly Report is due. If the fifth calendar day falls on a weekend or holiday the Quarterly Report shall be due the next working day.

(a) The first cash assistance Quarterly Report shall be due the earlier of:

(i) the second month following the month of approval; or

(ii) at the same time the next Quarterly Report is due in the Food Stamp Program for combined CA and FS households.

(b) A benefit group shall be required to submit a Quarterly Report:

(i) by the fifth calendar day of a month a Quarterly Report is due; and

~~(ii) every three months thereafter for the duration of the certification period.~~

~~(4) The caseworker shall review the Quarterly Report and verification for completeness within 10 days of receipt of a Quarterly Report form;~~

~~(a) If the form is complete and all verification provided to process the Quarterly Report form, the caseworker shall complete the processing of the form within 10 days of receipt.~~

~~(b) If the form is incomplete, lacking verification, or questionable verification is provided, the caseworker shall notify the benefit group in writing of what needs to be completed or verification which needs to be provided.~~

~~(i) A Quarterly Report form that is incomplete or not signed shall be returned to the benefit group for completion.~~

~~(ii) A Quarterly Report form that is complete, but is lacking sufficient verification to process, shall be maintained in the case file and written notification sent to the benefit group of the verification needed to process the report.~~

~~(5) A notice shall be issued to the benefit group by the 20th day of the month in which a report is due, to notify the benefit group that a completed Quarterly Report has not been received by the benefit group.~~

~~(6) Benefit groups who fail to submit a complete Quarterly Report form by the end of the month in which it is due, shall be issued an adequate notice of closure.~~

~~**H. Form Requirements for Quarterly Reporting:** The Quarterly Report form shall specify:~~

~~(1) the date by which the benefit group must submit the form for continued receipt of timely benefits;~~

~~(2) the consequences of submitting a late or incomplete form;~~

~~(3) that verification must be submitted with the Quarterly Report;~~

~~(4) where to call for help in completing the form; and~~

~~(5) consequences for providing incorrect information.~~

~~**I. Reporting Requirements Between Quarterly Reports:**~~

~~(1) A Quarterly Reporting benefit group shall not be required to report changes subject to the Quarterly Reporting requirement as found in Subsection D of 8.102.120.11 NMAC prior to the date the Quarterly Report form is due or during the period in between Quarterly Reports. These include:~~

~~(a) a change in benefit group composition, whether a member has moved in or out of the home, and the date the~~

~~change took place;~~

~~(b) money from employment;~~

~~(c) unearned income;~~

~~(d) purchase of a vehicle;~~

~~(e) opening of a savings or checking account;~~

~~(f) resources which exceed the \$1500 liquid or \$2000 non-liquid resource limit;~~

~~(g) dependent care expense; and~~

~~(h) change in residence.~~

~~(2) Changes reported prior to receipt of the Quarterly Report, shall be processed according to change processing requirements as found in 8.102.630 NMAC.~~

~~(3) A benefit group shall be required to timely report certain changes not subject to the Quarterly Reporting requirement include, but are not limited to:~~

~~(a) school attendance for dependent children;~~

~~(b) work participation requirements; and~~

~~(c) Social Security Number.~~

~~**J. Non-Reporting Sanctions:** A benefit group subject to Quarterly Reporting shall be subject to a non-reporting sanction in accordance to the guidelines in 8.102.620.11 NMAC for failure to provide accurate change information on the Quarterly Report form or failure to report changes timely not subject to Quarterly Reporting requirements. Changes not subject to Quarterly Reporting requirements that must be reported timely include, but are not limited to:~~

~~(1) **Social Security Number:** A benefit group must report when one of its members is assigned a Social Security Number within 10 days.~~

~~(2) **School Attendance:** A parent in the benefit group must report when a dependent child age six years or older drops out of school or has three unexcused absences. This information must be reported within 14 days of the date the change occurs.]~~

~~**SEMIANNUAL REPORTING:** Semiannual reporting is a periodic reporting requirement for certain benefit groups that receive NMW cash assistance. A benefit group that is assigned to semiannual reporting must file a report of changes in the sixth month of a twelve-month certification period.~~

~~**A. Certification period:**~~

~~(1) **Initial application:** A benefit group that is applying for both food stamps and NMW, shall be assigned a NMW certification period that ends in the same month as the food stamp certification period.~~

~~(2) An initial applicant for NMW that is already participating and assigned to semiannual reporting in the food stamp program:~~

~~(a) if approved for NMW, shall be~~

~~assigned a NMW certification period that will end the same month as the food stamp certification period; and~~

~~(b) must file a semiannual report in the same month that one is due in the food stamp program.~~

~~(c) If NMW is approved in the same month a semiannual report is due in the food stamp program, the requirement in Subparagraph (b), above, is waived for NMW.~~

~~(3) A benefit group that is approved for NMW, but does not receive food stamps shall be assigned a twelve-month certification period:~~

~~(a) beginning the first month of eligibility; and~~

~~(b) shall have a semiannual report due in the sixth month of the NMW certification period.~~

~~(4) A benefit group that is receiving NMW and applies for food stamps shall have NMW eligibility re-determined at the same time that the food stamp eligibility is determined.~~

~~(a) If NMW benefits increase, the increase shall be effective the month following the first month of approval for food stamps and NMW shall be assigned a certification period that ends in the month the semiannual reporting food stamp certification ends.~~

~~(b) If approved for food stamps and the NMW benefit decreases, the decrease shall be effective the month following the month the NOAA expires, and the NMW benefit group shall be assigned a certification period that ends in the same month the food stamp certification ends.~~

~~(c) If approved for food stamps and the NMW benefit is terminated, the termination shall be effective the month following the month the NOAA expires, and the food stamp case shall be transitioned to TFS.~~

~~(5) **Recertification:** A benefit group that is recertifying and is approved and assigned to semiannual reporting shall be assigned a certification period that:~~

~~(a) is twelve months long;~~

~~(b) begins the month after the current certification ends; and/or~~

~~(c) is set to end in the same month as a food stamp case with a common member.~~

~~**B. Excluded from semi-**~~

~~**annual reporting:** The semiannual reporting requirement shall be assigned to all NMW benefit groups with the following exceptions:~~

~~(1) a benefit group in which all members are migrant or seasonal farm workers;~~

~~(2) a benefit group in which all members are homeless;~~

~~(3) a benefit group in which all~~

adult members:

**(a)** receive unearned income from a source other than TANF, GA and UCB; and

**(b)** have no history of earned income in the last six months.

**(4)** a benefit group determined by the county director to have sufficient instability to warrant alternative reporting arrangements; this type of benefit group includes but is not limited to:

**(a)** a benefit group that reports an imminent change in residence to another state;

**(b)** a benefit group that reports income insufficient to meet ongoing debt obligations.

**(5)** A benefit group assigned to semiannual reporting which the county director has assigned to alternative reporting requirements shall be certified for no longer than three months.

**C. Transition to semiannual reporting:**

**(1)** A benefit group on quarterly reporting on December 31, 2003 shall be transitioned to semiannual reporting in the following manner.

**(a)** An active NMW benefit group whose first quarterly report is due in January, February or March 2004 shall not be required to file a quarterly report form and shall be required to file a semiannual report form in April, May, and June 2004, respectively.

**(b)** An active NMW benefit group whose second quarterly report is due in January, February, or March 2004 shall be required to file a semiannual report form in January, February, or March of 2004, respectively.

**(c)** An active NMW benefit group that has its third quarterly report due in January, February, or March 2004 shall not be required to file a form for quarterly reporting or semiannual reporting. The benefit group shall be required to file an application for recertification at the end of the ongoing certification period.

**(2)** A NMW benefit group that files an application prior to January 1, 2004, is approved for NMW benefits on or after January 1, 2004, and assigned semiannual reporting shall be assigned a 12-month certification period that begins in the first month of eligibility and shall have a semiannual report due in the sixth month of the certification period.

**D. Applicant benefit group:** A benefit group that is approved for NMW on or after January 1, 2004 and is assigned to semiannual reporting shall be assigned a 12-month certification period beginning in the month of application.

**E. Participating benefit group:** A benefit group not assigned semi-

annual reporting that subsequently is required to be on semiannual reporting because of a reported change:

**(1)** shall be transitioned at the end of the certification period in effect when the report occurred; or

**(2)** shall be transitioned to semiannual reporting if the reported change results in application, approval, and assignment to semiannual reporting in the food stamp program.

**F. Semiannual reporting requirements:**

A benefit group assigned to semiannual reporting shall be required to file a semiannual report no later than the tenth day of the sixth month of the 12-month certification period, or in compliance with the food stamp semiannual report, whichever is appropriate. The benefit group must include the following information along with verification:

**(1)** any change in benefit group composition, whether a member has moved in or out of the home along with the date, the change took place;

**(2)** the amount of money received from employment by each benefit group member;

**(3)** the amount of unearned income received by each benefit group member;

**(4)** changes in countable resources if the total of all countable resources for the benefit group exceed the \$1500 liquid or \$2000 non-liquid resource limit, such as but not limited to:

**(a)** the account number and balance for a new checking or savings account belonging to any household member; or

**(b)** the amount of any new stocks or bonds or other financial instruments belonging to any household member.

**(5)** dependent care expenses;

**(6)** verification for residence, only if, there has been a change in residence since the last certification;

**(7)** changes in child support receipt; and

**(8)** changes in alien status for a benefit group member.

**G. Budgeting methodology for semiannual reporting at initial application and recertification:**

**(1)** Prospective budgeting shall be used for an applicant benefit group at initial application and at recertification as set forth at 8.102.500.9 NMAC.

**(2)** At initial application, eligibility and amount of payment for the applicant benefit group shall be determined prospectively for the each of the first six months of the certification.

**(3)** At recertification, eligibility and amount of payment shall be determined prospectively for six months following last month benefit group's certification period.

**H. Budgeting methodology for semiannual reporting:**

**(1)** At processing the semiannual report, eligibility and amount of payment shall be determined prospectively for the six months following the month the semiannual report is due.

**(2)** In determining a benefit group's eligibility and payment amount, the income already received shall be used to prospectively anticipate income the benefit group expects to receive during the certification period according to the following schedule:

**(a) Weekly:** For income received weekly the recipient benefit group must submit and the department shall accept as verification of income pay data for any consecutive four week pay periods that fall within the month prior to the month the report is due and the month the report is due.

**(b) Bi-weekly:** For income received bi-weekly the recipient benefit group must submit and the department shall accept as verification of income pay data for any two consecutive pay periods within the month prior to the month the report is due and the month the report is due.

**(c) Semi-monthly:** For income received semi-monthly the recipient benefit group must submit and the department shall accept as verification pay data from any two consecutive pay periods within the month prior to the month the report is due and the month the report is due.

**(d) Monthly:** For income received monthly the recipient benefit group must submit and the department shall accept as verification of income pay data for any one pay date within the month prior to the month the report is due and the month the report is due.

**(e) Income received more frequently than weekly :** For benefit groups with income received more frequently than weekly, exact income, rather than averaged and converted income shall be used to determine benefits. For income received more frequently than weekly the recipient benefit group must submit and the department shall accept as verification of income pay data in any consecutive 30-day period within the month prior to the month the semiannual report and the month the report is due.

**(f)** If a determination is made that the use of the pay data for the methods described in (a) through (e), above, does not give the most accurate estimate of monthly earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

**(g) Income received less frequently than monthly:** The amount of



monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It also includes contract income and income for a tenured teacher who may not have a contract.

**(3) Self-employment:**

**(a)** Requirements for determination of self-employment income are set forth at Subsection E of 8.139.520.10 NMAC, and the verification standards for business and self-employment income are set forth at Subsection B of 8.100.130.14 NMAC.

**(b)** A benefit group assigned semiannual reporting that has had self-employment income annualized by the department shall be required to report changes in self-employment income only if the benefit group has filed a tax return subsequent to its last approval or recertification for NMW.

**(c)** A benefit group assigned semiannual reporting that does not have the self-employment income annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner.

**(i)** If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the duration of the certification period.

**(ii) Seasonal income:** Self-employment income that is intended to meet a benefit group's needs for only part of the year shall be averaged over the time the income is intended to cover.

**(d)** A benefit group required to report semiannual self-employment income that fails to provide verification of an allowable deduction at the semiannual or during the month the semiannual report is due shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

**(4) Use of conversion factors:** Conversion factors shall be used to adjust the monthly income amounts. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3 and biweekly amounts by 2.15. Use of the conversion factors shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received. Instead, the amount of the extra paycheck is averaged over the certification

period.

**(5) Rounding of income when using conversion factors:** Averaged income shall be rounded prior to the application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

**I. Time limits for submission and processing a semiannual report.**

**(1)** A semiannual report form shall be mailed to a benefit group in the month prior to the month the report is due.

**(2)** A benefit group assigned to semiannual reporting shall be required to submit a semiannual report form by the tenth calendar day of the month the semiannual report is due.

**(3)** The semiannual report shall be reviewed for completeness within ten days of receipt.

**(a)** If the form is complete and all verifications are provided, a caseworker shall complete the processing of the form within ten days of receipt.

**(b)** If the form is complete and all verifications are provided except for verification of an allowable deduction, the report shall not be processed. The household shall be:

**(i)** notified that verification is lacking; and

**(ii)** shall be given ten days to provide verification of an allowable deduction.

**(iii)** A deduction that is verified within the month the semiannual report is due shall be processed as part of the semiannual report.

**(iv)** A deduction that is verified in the month after the semiannual report is due shall be processed as a change reported by the household.

**(v)** A deduction that does not have the required verification shall not be allowed until verification of the expense is provided.

**(4)** A semiannual report form that is incomplete or not signed shall be returned to the benefit group for completion.

**(5)** The benefit group must return the completed semiannual report form and all required verification within ten calendar days or by the end of the month to avoid a break in benefits. A benefit group that fails to submit a semiannual report by the end of the month in which it is due, shall be issued an adequate notice of closure.

**J. Information requirements for semiannual reporting:** The semiannual report form shall specify:

**(1)** the date by which a benefit group must submit the form for uninterrupted benefits;

**(2)** the consequences of submit-

ting a late or incomplete form;

**(3)** that verification must be submitted with the semiannual report;

**(4)** where to call for help in completing the form;

**(5)** the consequences of providing incorrect information; and

**(6)** notice of rights.

**K. Requirement to report certain changes between reporting periods:** A benefit group assigned to semiannual reporting must report in between reporting periods the following changes:

**(1)** within ten days of occurrence, the benefit group must report when a social security number is assigned to a benefit group member; or

**(2)** within fourteen days of occurrence, a parent must report when a dependent child, age six years or older, drops out of school or has three unexcused absences from school.

**L. Non-reporting sanctions:** A benefit group assigned to semiannual reporting shall be subject to a non-reporting sanction in accordance with regulations at 8.102.620.11 NMAC for failure to provide accurate change information on the semiannual report form or for failure to report by the tenth day of the month following the month that household income exceeds eighty-five percent of federal poverty guidelines for the size of the benefit group.

**M. Action on changes reported between reporting periods for benefit groups assigned to semiannual reporting:**

**(1)** The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

**(a)** a benefit group reports income in excess of eighty-five percent of federal poverty guidelines for size of the benefit group;

**(b)** a benefit group reports, or the department receives documented evidence that the benefit group has moved from the state or intends to move from the state on a specific date;

**(c)** a benefit group requests closure; or

**(d)** the department receives documented evidence that the head of benefit group has died.

**(2)** A newborn shall be added to the benefit group effective the month following the month the report is received, if the addition is reported to the agency by the benefit group or by the hospital for Medicaid purposes.

**(3)** The loss of earned income shall be considered for eligibility in the second month after the loss and ongoing until the next scheduled semiannual report or end

of certification whichever is first, provided that:

(a) the loss of income was reported to the agency, and verified by the benefit group; and

(b) the loss of income was not due to voluntary quit; and

(c) the individual who lost the job is likely to remain unemployed in the second month after the loss of income;

(d) the individual who lost the job cannot reasonably anticipate a replacement source of income by the end of the second month after the loss, including but not limited to, UCB, other earned income, social security (OASDI) or supplemental security income (SSI).

(e) If the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period.

(4) The loss of unearned income shall be considered for eligibility in the second month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that:

(a) the loss of income was reported to the agency, and verified by the benefit group; and

(b) the individual who lost the unearned income cannot reasonably anticipate having the income reinstated or receiving another type of unearned income or earned income prior to the next scheduled semiannual report or end of certification which ever is first.

(c) If the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period.

[8.102.120.11 NMAC – N, 02/14/2002; A, 01/01/2004]

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

**This is an amendment to 8.102.500 NMAC, Section 9. This amendment replaces quarterly reporting with semi-annual reporting requirements.**

**8.102.500.9 PROSPECTIVE BUDGETING**

**A. Eligibility for cash**

assistance programs shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

**B. [ ~~Quarterly~~ ] Semiannual reporting:** A benefit group subject to [~~Quarterly Reporting~~] semiannual reporting shall be subject to income methodology as specified in Subsection [F] H of 8.102.120.11 NMAC.

**C. Changes in benefit group composition:** A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

**D. Anticipating income:** In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification period shall be used.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

**E. Income received less frequently than monthly:** The amount of monthly gross income that is received less frequently than monthly is determined by dividing the total income by the number of months the income is intended to cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

**F. Contract income:** A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

**G. Using exact income:** Exact income, rather than averaged income, shall be used if:

(1) the benefit group has chosen

not to average income;

(2) income is from a source terminated in the month of application;

(3) employment began in the application month and the income represents only a partial month;

(4) income is received more frequently than weekly.

**H. Income projection - earned income:**

(1) Income from the four-week period prior to the date of interview is used to project monthly income, provided that the income is expected to continue. If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used. If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(2) None of the methods described above may give the most accurate estimate of monthly earnings due to unique circumstances which may occur. In such cases, use whatever method gives the most accurate estimate of earnings.

(3) An income projection shall be considered valid for the certification period.

**I. Unearned income:** For purposes of anticipating future income, unearned income from the four-week period prior to the date of interview shall be used, provided that the income is expected to continue.

**J. Use of conversion factors:** Conversion factors are used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equally for the months in the certification period [~~or the Quarterly Reporting period~~].

(1) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.

(2) Income received weekly is multiplied by 4.3.

(3) Income received biweekly is multiplied by 2.15.

**K. Rounding of income when using conversion factors:** Averaged income is rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount is rounded up to the next higher dollar.

[8.102.500.9 NMAC - Rp 8.102.500.9 NMAC, 07/01/2001; A 02/14/2002; A, 01/01/2004]

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

**This is an amendment to 8.102.520 NMAC, Section 12. This amendment repeals any reference to quarterly reporting and implements the requirements of the semiannual reporting regulations.**

**8.102.520.12 EARNED INCOME DEDUCTIONS**

**A. Earnings deductions:**

Deductions from gross earned income shall be made in determining the net countable earned income of benefit group members.

(1) Earned income deductions may not exceed the amount of an individual's gross earned income.

(2) The earned income deductions may not be used to reduce unearned income, nor may deductions that are not used by one benefit group member be allocated against the earnings of another benefit group member.

(3) An allowable deduction that is not verified at the time of certification or processing of the ~~Quarterly Report~~ semi-annual report shall not be allowed as a deduction ~~from earned income~~. A deduction verified after certification ~~or processing of the Quarterly Report~~ shall be processed as a change.

(4) An allowable deduction that is verified after a semiannual report is processed shall be handled as set forth at Subsection I of 8.102.120.11 NMAC.

**B. Business expenses and self-employment costs:** Business expenses and self-employment costs shall be deducted from the gross earnings of a self-employed benefit group member. The income after all allowable business expenses and self-employment costs shall be counted as the gross income of the benefit group member. To be eligible for this expense a tax ID shall be required.

(1) **Allowable expenses and costs:** Allowable costs of producing self-employment income include, but are not limited to:

(a) costs of materials and supplies;

(b) business travel, but not personal commuting expenses, calculated at \$.25 per mile, unless the self-employed individual can prove that the actual expense is greater;

(c) business taxes, including occupational taxes, gross receipts taxes, property taxes on a place of business other than the home, and business licenses.

(d) rental of equipment, tools, and machinery;

(e) rent expense for the place of

business, except for the place of business when the individual operates the business out of the individual's residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines.

(f) payments on the principal of the purchase price of income producing real estate and capital assets, machinery, equipment and other durable goods;

(g) interest paid to purchase income producing property.

**(2) Expenses and costs not allowed:**

(a) Costs for depreciation, personal business, entertainment expenses, personal transportation to and from work.

(b) Expenses or costs of self-employment that are reimbursed by other agencies cannot also be claimed as costs of self-employment, such as but not limited to, reimbursements made through USDA to individuals who provide home child care.

(3) Expenses or costs that exceed self-employment income shall not be deducted from other income.

**C. Excess hours work deduction:**

(1) To qualify for the excess hours work deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.

(2) **Time limit for allowing the deduction:** The excess hours work deduction is allowed for the first 24 months of receipt of NMW cash assistance. The 24 month period begins with and includes April 1998 and includes each month thereafter in which the individual is a member of a NMW benefit group receiving cash assistance or services. Months in which an individual is not a member of an NMW benefit group receiving cash assistance or services shall not add to the count of months for this deduction.

(3) For the excess hours deduction only, in determining the number of hours worked, only those hours spent in paid employment are counted.

(4) To determine the number of hours worked when the person is self-employed, the monthly gross earnings are divided by the minimum wage. The amount of the excess hours work deduction shall be calculated using minimum wage.

(5) **Single-parent benefit group:** For the first 24 months of receiving cash assistance or services, if an individual works over the participation standard set by the department pursuant to the New Mexico Works Act, all the income earned by the

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individual beyond the participation standard shall be excluded.

**(6) Two-parent benefit group:** For the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over 35 hours per week and the other parent works over 24 hours per week, all the income earned by each parent beyond the participation standard set by the department shall be excluded.

**(a)** In determining the number of excess hours, the 35-hour per week requirement shall be applied to the person with the larger number of hours of work and the 24-hour per week requirement shall be applied to the person with the smaller number of hours.

**(b)** With respect to a two-parent benefit group in which only one parent is subject to work program participation and is employed, the excess hours deduction shall be allowed for work hours in excess of 35 hours per week.

**(7)** Other adults included in a single-parent or two-parent benefit group shall be allowed the excess hours work deduction based on single parent provisions.

#### **D. Work incentive deduction:**

**(1)** To qualify for the work incentive deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.

**(2) Allowing the deduction:** The work incentive deduction is allowed with no time limit as follows:

**(a)** \$125 and one-half of the remainder for the parent in a single-parent benefit group;

**(b)** \$225 and one-half of the remainder for each parent in a two-parent group;

**(c)** \$125 ~~for~~ and one-half of the remainder for a benefit group member in a single-parent or two-parent benefit group who is not a parent; and

**(d)** \$125 for a non-benefit group members whose income is deemed available.

**E. Child care costs:** Out of pocket expenses for child care that is necessary due to employment of a benefit group member shall be allowed.

**(1)** From earnings remaining after allowing the excess hours and work incentive deductions, deduct an amount not to exceed \$200 per month for a child under age two and \$175 per month for a child age two or older.

**(2)** If more than one parent is working, costs of child care shall be allocat-

ed to maximize the available deduction to the benefit group.

**(3)** The total amount deducted per child, regardless of the number of benefit group members who are employed, shall not exceed the applicable limits set forth above.

**F. Contributions made into approved individual development accounts:** The actual amount contributed into an approved IDA from an employed benefit group member's earnings shall be an allowable deduction from earned income. [8.102.520.12 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004]

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

**This is an amendment to 8.102.620 NMAC, Section 11. This amendment repeals any reference to quarterly reporting and implements semiannual reporting regulations.**

#### **8.102.620.11 NON-REPORTING SANCTIONS**

**A. General:** The eligibility determination and payment calculation process relies upon applicants and recipients to provide accurate and timely reports of information affecting their eligibility and payment. Payment sanctions for non-reporting shall be established to encourage timely and accurate reporting and to offset benefits resulting from the reporting of inaccurate or misleading information, the untimely reporting of changes, or the failure to report any required information.

#### **B. Non-reporting sanctions:**

**(1) Length of sanction:** Each non-reporting sanction shall run for a period of four months for the first month in which failure to report occurred. An additional month shall be added for each additional month of non-reporting until the payment is corrected.

**(2) Definition of an occurrence of non-reporting:** An occurrence of non-reporting exists when an applicant or recipient fails to report information or reports incorrect information which results in an overpayment of financial assistance benefits for which the individual is at fault.

#### **(3) Amount of sanction:**

**(a)** Reporting sanctions shall be calculated at 25% of standard of need for the size of the benefit group being sanctioned.

**(b)** Reporting sanctions are not progressive. If there is another occurrence

of non-reporting prior to the end of a non-reporting sanction period, the next and any subsequent non-reporting sanctions shall be consecutive and at the 25% level.

**(c)** Reporting sanctions, child support sanctions and work program sanctions shall be integrated into a single calculation to determine the final sanction amount.

**(d)** If a case closes during a reporting sanction period for reasons other than sanctions, the non-reporting sanction shall be suspended and resumed at the same duration the next time the case is opened.

**(4) Procedures:** The following steps shall be taken in implementing a payment sanction.

**(a)** The worker shall document and establish an overpayment claim using ISD2 overpayment claims procedures. The worker shall also determine whether the recipient was at fault.

**(b)** The county director or a designated unit supervisor shall review the overpayment and determine the accuracy of the overpayment determination and appropriateness of the fault determination. Upon determining that all is in order, the county director, or designated supervisor shall cause a notice of intent to sanction to be issued to the recipient. Failure by the recipient to contact the person issuing the notice within the 10 working days allowed shall constitute waiver of conciliation rights.

**(c)** If the recipient requests conciliation within the 10 working days of issuance of notice, the county director or designated supervisor shall schedule a conciliation conference.

**(d)** The conciliation conference is conducted by the county director or designated supervisor.

**(i)** The caseworker shall describe the reporting error, how the amount of the overpayment is determined and the reasons for finding the recipient at fault.

**(ii)** The recipient shall have the opportunity to discuss the overpayment determination, the finding of fault and to show good cause why the sanction should not be imposed.

**(iii)** Based upon this determination, the county director or designated supervisor shall determine whether a sanction should be imposed.

**(iv)** The recipient may represent himself or be represented by someone else. If the recipient wishes to be represented by another individual, the recipient must designate that individual on a form ISD-121.

**(e)** Following the conference, the county director shall issue written notice stating whether or not the sanction is to be imposed, and the worker shall effect the

sanction causing issuance of a notice of adverse action. The payment reduction takes effect in the month following expiration of the notice of adverse action.

(f) Recipients who disagree with the sanction determination shall have fair hearing rights and access to legal adjudication through the fair hearing process.

C. [Quarterly] **Semiannual reporting:** A benefit group subject to [Quarterly Reporting] semiannual reporting shall be subject to non-reporting sanctions as specified in Subsection [F] L of 8.102.120.11 NMAC. [8.102.620.11 NMAC - Rp 8.102.620.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004]

### NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**This is an amendment to 8.102.630 NMAC, Sections 8 and 9. This amendment repeals any reference to quarterly reporting and implements semiannual reporting requirements.**

**8.102.630.8 PROCESSING STANDARDS:** There is a continuing responsibility on the part of both the recipient and the caseworker to make sure that benefits paid to the benefit group correctly reflect the benefit group's circumstances for the month for which payment is being made.

A. **Client reporting timeliness:** The benefit group must report any of the changes specified below within 10 calendar days of the date the change becomes known to the benefit group.

B. **Who is responsible for reporting:** The individual designated as the head of household is responsible for reporting changes. If a protective payee has been named because of mismanagement, part of the protective payee's responsibilities include making sure that changes are reported, either by the specified relative or the protective payee.

C. **Department action on reported changes:** Reported changes are evaluated and eligibility/payment changes made within 10 days of receiving notice of a change. The change is made as soon as possible but must be effected no later than the end of the month following the month in which the change is reported.

D. **What must be reported:** Recipients shall be required to report any change in benefit group composition and circumstances. This includes:

(1) **An individual moving into or out of the home:** A benefit group must report when an individual moves into or out

of the home so that the impact of the person on the benefit group's eligibility and payment can be evaluated.

(2) **Social security number:** A benefit group must report when one of its members is assigned a social security number.

(3) **Residence:** A benefit group is required to report whenever the benefit group or any member of it is leaving New Mexico.

(4) **School attendance:** A benefit group must report whenever a dependent child age six or older drops out of school or has three unexcused absences. This information must be reported within 14 days.

(5) **Address:** A benefit group must report moving to another place of domicile, regardless of whether mail is being sent to that address, or whether the place of domicile is the place of residence.

(6) **Income:** A benefit group must report any change in benefit group income and any change in the employment status of any benefit group member.

(7) **Resources:** A benefit group must report any change in resources which places the benefit group over the resource limit standards of \$1500 in liquid resources or \$2000 in non-liquid resources.

E. [Quarterly] **Semiannual reporting:** A benefit group subject to [Quarterly] semiannual reporting shall be subject to reporting requirements as specified [in Subsection I of] at 8.102.120.11 NMAC. [8.102.630.8 NMAC - Rp 8.102.630.8 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004]

**8.102.630.9 CHANGE PROCESSING:** If during a certification period, changes occur that affect eligibility or benefit amount, the caseworker shall take action to adjust the benefit group's eligibility or benefit amount.

A. **Benefit group responsibilities:**

(1) **At application:** An applicant must report all changes affecting eligibility and benefit amount that may have occurred since the date the application was filed and before the date of the interview. Changes occurring after the interview, but before the date of the approval notice, must be reported by the benefit group within 10 days of the date the change is known to the benefit group.

(2) **Change reporting requirements for active cases:** A benefit group must report changes within ten (10) days of the date a change becomes known to the benefit group.

(3) **Time limits:**

(a) The 10-day period begins with the date the change becomes known to the

benefit group.

(i) A financial change becomes known to the benefit group when the benefit group receives the first payment attributed to an income or resource change, or when the first payment is made for an allowable expense.

(ii) A non-financial change, including but not limited to, a change in benefit group composition or a change in address, becomes known to the benefit group on the date the change takes place.

(b) The change is considered reported on the date the report of change is received by the local county office or, if mailed, the date of the postmark on the benefit group's report plus three days mailing time, ~~whichever is earlier~~.

(c) Benefit groups shall be encouraged to use a change report form to document changes, although changes may also be reported by personal visit or telephone.

(d) In the absence of a written report, a 13-day notice of adverse action is required if the change will result in a reduction or termination of benefits.

(4) ~~[Quarterly reporting benefit groups:~~

~~(a) Change reporting requirements for a benefit group subject to Quarterly Reporting is specified in 8.102.120.11 NMAC.~~

~~(b) Changes reported and verified by a benefit group subject to Quarterly Reporting requirements shall be acted on by the caseworker according to the standards of Subsection B of 8.102.630.9 NMAC.]~~

Semiannual reporting benefit groups: A benefit group assigned to semiannual reporting shall only be required to report when benefit group income exceeds eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

B. **Department responsibilities:** The caseworker shall inform the benefit group of its responsibility to report changes. The caseworker shall be required to take action on any change reported by the benefit group to determine if the change affects eligibility or benefit amount. The caseworker shall document the date a change is reported, and whether the change affects eligibility or benefit amount.

(1) **Action on changes:** When a benefit group reports a change, the caseworker must take action to determine the benefit group's eligibility and benefit amount within ten days of the date the change is reported. For changes that result in a decrease or termination of benefit group benefits, the caseworker shall act on the change as follows:

(a) If the caseworker receives a written report from the benefit group, action

shall be taken for the following month without an advance notice of adverse action. The benefit group shall be provided with adequate notice. If the certification period will expire before the expiration notice time limit, no action shall be required to reduce or terminate benefits.

(b) If the change is reported by any other means, within 10 days, the caseworker shall take action to issue a notice of adverse action to reduce or terminate benefits effective the month following the month the adverse action time limit expires. If the certification period will expire before the expiration of the adverse action time limit, no action shall be required to reduce or terminate benefits.

**(2) Increased benefits:**

(a) For changes resulting in an increase, the caseworker shall make the change prospectively beginning in the month following the month the change was reported.

(b) **Providing verification:** The benefit group shall be allowed 10 days from the date a change is reported to provide verification. If verification is not provided at the time a change is reported, the benefit group shall be allowed 10 days, plus 3 days if a notice is mailed, to provide verification.

(3) **Decreased benefits:** When a benefit group timely reports a change which will decrease benefits, the caseworker shall issue an adverse action notice to the benefit group. If the adverse action time limit expires in the following month, there is no overpayment in the following month and the benefit group is entitled to the greater benefit amount. The decrease shall be effective in the month following the month the notice expires.

(4) **Termination of benefits:** When the benefit group reports a change which will result in a termination of benefits, the caseworker shall issue an adverse action notice.

(a) If the adverse action time limit expires in the following month, there is no overpayment to the benefit group in the following month and the benefit group shall be entitled to the greater benefit amount. No claim shall be filed.

(b) If the adverse action time limit will expire after the certification period ends, action shall be taken to terminate benefits and the certification period shall be allowed to expire. The caseworker shall document the change in the case record.

(5) **No change in benefit amount:** When a reported change has no effect on the benefit amount, the caseworker shall document the change in the case file and notify the benefit group of the receipt of the report and that there is no change in benefits.

**C. Failure to report**

**changes:**

(1) If the caseworker discovers that the benefit group failed to report a change as required, the caseworker shall evaluate the change to determine whether the benefit group received benefits to which it was not entitled. After verifying the change, the caseworker shall initiate a claim against the benefit group for any month in which the benefit group was over paid benefits. The first month of the over payment shall be the month following the month the adverse action notice time limit would have expired had the benefit group timely reported the change. If the discovery is made within the certification period, the benefit group is entitled to a notice of adverse action if its benefits shall be reduced. No claim shall be established because of a change in circumstances that a benefit group is not required to report.

(2) **Increased benefit amount:** When a benefit group fails to make a timely report of a change which will result in an increased benefit amount the benefit amount shall increase the month following the month in which the change was reported.

**D. Other changes:** All unreported changes of which the caseworker becomes aware of shall be acted upon. At a minimum, this means documenting changes in the case record. All discrepancies and questionable information shall be resolved to make sure that the correct benefit amount is issued to the benefit group. [8.102.630.9 NMAC - N, 07/01/01; A, 02/14/2002; A, 01/01/2004]

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

**This is an amendment to 8.139.100.7 NMAC to revise the definition of "Regular reporting", to add a definition of "Semiannual reporting", and to renumber the subsequent definitions. This is an amendment to 8.139.100.8 NMAC to add an acronym for "Semiannual reporting" or "SR" and to renumber the subsequent acronyms.**

**8.139.100.7 DEFINITIONS**

**A. Definitions A-L:**

(1) **Adequate notice:** means a written notice that includes a statement of the action HSD has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits, liability of the household for any overissuances received if hearing decision is adverse to the household. An adequate notice may be received

prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(2) **Adjusted net income:** means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical expenses are allowed for certain eligible members as a deduction from their gross income). Thirty percent of this amount subtracted from the MFSA for the household's size is its benefit amount.

(3) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(4) **Attendant:** means an individual needed in the home for medical, house-keeping, or child care reasons.

(5) **Authorized representative:** means an individual designated by a household or responsible member to act on its behalf in applying for food stamp benefits, obtaining food stamp benefits, and/or using food stamp benefits to purchase food for the household. This can include a public or private, nonprofit organization or institution providing assistance, such as a treatment or rehabilitation center, or shelter, which acts on behalf of applicants, whom resides at the facility.

(6) **Benefit month:** means the month for which food stamp benefits have been issued. This term is synonymous with issuance month defined below.

(7) **Beginning month:** means the first month for which a household is certified after a lapse in certification of at least one calendar month in any project area. A household is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(8) **Boarder:** means an individual to whom a household furnishes lodging and meals for reasonable compensation. Such a person is not considered a member of the household for determining the food stamp benefit amount.

(9) **Boarding house:** means a commercial establishment, which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house is not used to establish if a boarding house is a commercial enterprise.

(10) **Budget month:** means the calendar month for which income and other circumstances of the household are determined in order to calculate the food stamp

benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

**(11) Capital gains:** means proceeds from the sale of capital goods or equipment.

**(12) Cash assistance (CA) households:** (also referred to as financial assistance) means households composed entirely of persons who receive CA payments. Cash assistance (CA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. CA households composed entirely of TANF, GA and/or SSI recipients are categorically eligible for FS.

**(13) Certification:** means the authorization of eligibility of a household and issuance of food stamp benefits.

**(14) Certification period:** means the period assigned for which a household is eligible to receive food stamp benefits. The certification period shall conform to calendar months.

**(15) Collateral contact:** means an individual or agency designated by the household to provide information concerning eligibility.

**(16) Communal diner:** means an individual sixty (60) years of age or over who is not a resident of an institution or a boarding house, who is living alone or with a spouse, and elects to use food stamp benefits to purchase meals prepared for the elderly at a communal dining facility which has been authorized by USDA/FNS to accept food stamp benefits.

**(17) Communal dining facility:** means a public or private nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for SSI recipients, and their spouses; a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate state or local agency to offer meals at concession prices to elderly persons or SSI recipients and their spouses. Such establishments include a facility such as a senior citizen's center, an apartment building occupied primarily by elderly persons, or any public or private nonprofit

school (tax exempt) which prepares and serves meals for elderly persons.

**(18) Date of entry/admission:** means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

**(19) Disability:** means the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

**(20) Disabled member:** see elderly/disabled member.

**(21) Documentation:** means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

**(22) Drug addiction or alcoholic treatment and rehabilitation program:** means any drug addiction treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center under part B of title XIX of the Public Health Service Act (42 U.S.C. 3004 et seq.)

**(23) Elderly or disabled member:**

**(a) Elderly:** means a person who is age 60 or older.

**(b) Disabled:** means a person who meets any of the following standards:

**(i)** receives supplemental security income (SSI) under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

**(ii)** receives federally or state administered supplemental benefits under section 1616a of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

**(iii)** receives federally or state administered supplemental benefits under section 212(a) of Pub. L. 93-66;

**(iv)** receives disability retirement benefits from a government agency (e.g. civil service, ERA, and PERA) because of a disability considered permanent under section 221(i) of the Social Security Act;

**(v)** is a veteran with a service-connected or non-service connected disability rated by the veterans administration (VA) as total or paid as total by the VA under title 38 of the United States code;

**(vi)** is a veteran considered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States Code;

**(vii)** is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and atten-

dance or permanently homebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

**(viii)** is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non-service-connected death under title 38 of the United States code and has a disability considered permanent under section 221(i) of the Social Security Act ("entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated, or have been approved for such payments, but are not yet receiving them); or

**(ix)** receives an annuity payment under section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive medicare by the railroad retirement board, or section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act.

**(x)** is a recipient of interim assistance benefits pending the receipt of supplemental security income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based state general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the state agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

**(24) Eligible foods: means**

**(a)** any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption;

**(b)** seeds and plants to grow foods for the personal consumption of eligible households;

**(c)** meals prepared and delivered by an authorized meal delivery service to households eligible to use food stamp benefits to purchase delivered meals, or meals served by an authorized communal dining facility for the elderly, for SSI households, or both, to households eligible to use food stamp benefits for communal dining;

**(d)** meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households;

**(e)** meals prepared and served by a group living arrangement facility to resi-

dents who are blind or disabled as found in the definition of "elderly or disabled member" contained in this section;

(f) meals prepared and served by a shelter for battered women and children to its eligible residents; and

(g) in the case of homeless food stamp households, meals prepared and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter) approved by HSD that feeds homeless persons.

(25) **Encumbrance:** means debt owed on property.

(26) **Equity value:** means the fair market value of property, less any encumbrances owed on the property.

(27) **Excluded household members:** means individuals residing within a household who are excluded when determining household size, the food stamp benefit amount or the appropriate MFSA. These include ineligible aliens, individuals disqualified for failure to provide an SSN, or failure to comply with the work requirements, and those disqualified for intentional program violation. The resources and income (counted in whole or in part) of these individuals shall be considered available to the remaining household members. (See non-household members).

(28) **Expedited services:** ~~The~~ means the process by which households reporting little or no income or resources shall be provided an opportunity to participate in the FSP, no later than the seventh calendar day following the date the application was filed.

(29) **Fair hearing:** an administrative procedure during which a claimant and/or the claimant's representative may present a grievance to show why he/she believes an action or proposed action by HSD is incorrect or inaccurate.

(30) **Fair market value (FMV):** means the amount an item can be expected to sell for on the open market. The prevailing rate of return, such as square foot rental for similar usage of real property in an area.

(31) **Financial assistance (FA) households:** (also referred to as cash assistance) means households composed entirely of persons who receive FA payments. Financial assistance (FA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds, made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. FA households composed entirely of TANF,

GA and/or SSI recipients are categorically eligible for FS.

(32) **FNS:** means the food and nutrition service of the United States department of agriculture (USDA).

(33) **Food Stamp Act:** the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

(34) **Fraud:** the elements of fraud are:

(a) intentionally taking anything of value;

(b) intentionally making a misrepresentation of, or failing to disclose, a material fact: with the knowledge that such a fact is material (necessary to determine initial/ongoing eligibility or benefit entitlement); and with the knowledge that the information is false; and with the intent that the information be acted upon (deceive/cheat); with reasonable reliance on the person who hears the information to accept it as the truth.

(c) In determining whether there is a "reasonable suspicion" of client fraud, particular attention shall be given to the client's intent in providing false information or withholding information. The law requires that the client acted intentionally in giving or withholding information, and with the further specific intent to deceive or cheat.

(d) The materiality of the information in question is determined by whether the information was necessary to determine eligibility or benefit amounts. However, the client must have knowledge that the information is material to the client's eligibility or benefit amount.

(e) In order to establish a "reasonable suspicion" of client fraud, there must be identifiable objective factors indicating that there is a possibility of fraud in the case. This means that there must be more than a "hunch". However, it is not necessary for the caseworker to make a determination that fraud has been actually committed.

(35) **Full time employment (FS):** working thirty (30) hours or more per week, or earning income equivalent to the minimum wage multiplied by 30 hours.

(36) **General assistance (GA) households:** means a household in which all members receive cash assistance financed by state or local funds.

(37) **Gross income:** the total amount of income that a household is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the household, but diverted by the provider. Gross income does not include specific income exclusions, such as, but not

limited to, the cost of producing self-employment income, and income excluded by federal law.

(38) **Group living arrangements:** means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under section 1616(e) of the Social Security Act, or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of "elderly or disabled member" set forth at (i) through (x) of Subparagraph (b) of Paragraph (23) of Subsection A of 8.139.100.7 NMAC.

(39) **Head of household:** the household is the basic assistance unit for the food stamp program. The household has the right to select the head of household in accordance with the CFR 273.1 (d).

(40) **Homeless individual:** means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

(a) a supervised shelter providing temporary accommodations (such as a welfare hotel or congregate shelter);

(b) a halfway house or similar institution providing temporary residence for individuals intended to be institutionalized;

(c) a temporary accommodation for no more than 90 days in the residence of another individual, beginning on the date the individual moves into the temporary residence; or

(d) a place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

(41) **Homeless meal provider:** means a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

(42) **Immigrant:** means a lawfully admitted alien who entered the U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

(43) **Immigration and naturalization service (INS):** a division of the U.S. department of justice.

(44) **Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

(45) **Income:** means all monies received by the household from any source, excluding only the items specified by law or



regulation. Income is also defined as any monetary gain or benefit to the household.

**(46) Income and eligibility verification system:** [~~This is~~] means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of section 1137 of the Social Security Act, referred to as IEVS.

**(47) Initial month:** means the first month for which a first-time household is certified for participation in the food stamp program. An initial month is also a month in which a household is certified following a break in participation of one calendar month or longer. For migrant or seasonal farm worker households, an initial month shall only be considered if there has been an interruption in certification of at least one calendar month.

**(48) Inquiry:** means a request for information about eligibility requirements for a cash, medical, or food assistance program that is not an application. (although the inquiry may be followed by an application).

**(49) Institution of higher education:** means any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

**(50) Institution of post-secondary education:** means an institution of post-secondary education and any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or provides a program of training to prepare students for gainful employment.

**(51) Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

**(52) Issuance month:** means the calendar month for which food stamps are issued. In prospective budgeting, the budget and issuance months are the same. In retrospective budgeting, the issuance month follows the budget month.

**(53) Low-income household:** means a household whose annual income does not exceed 125% of the office of management and budget poverty guideline.

#### B. Definitions M-Z:

**(1) Maximum food stamp allotment (MFSA):** the diet required to feed a

family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age. The cost of such a diet shall be the basis for uniform food stamp benefit amounts for all households, regardless of their actual composition. In order to develop maximum food stamp benefit amounts, the USDA makes adjustments for household size taking into account the economies of scale and other adjustments as required by law. The MFSA is used to determine if a boarder is paying reasonable compensation for services. The maximum food stamp allotment (MFSA) was the thrifty good plan (TFP).

**(2) Meal delivery service:** means a political subdivision, a private non-profit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concession prices to elderly persons, and their spouses, and to the physically or mentally handicapped, and to persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

**(3) Medicaid:** medical assistance under title XIX of the Social Security Act, as amended.

**(4) Migrant/migrant household:** means an individual who travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity. A migrant household is a group that travels for this purpose.

**(5) Mixed households:** means those households in which some but not all of the members receive cash assistance benefits.

**(6) Net monthly income:** means gross nonexempt income minus the allowable deductions. It is the income figure used to determine eligibility and food stamp benefit amount.

**(7) Non-cash assistance (NCA) households:** means any household, which does not meet the definition of a cash assistance household, including households composed of both cash assistance and [~~NCA~~] NCA members (mixed household). Same as non-financial households (NFA).

**(8) Non-financial assistance (NFA) households:** means any household, which does not meet the definition of a financial assistance household, including households composed of both cash assistance and [~~NFA~~] NFA members (mixed household). Same as non-cash households (NCA).

**(9) Nonhousehold members:** persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are

excluded. Nonhousehold members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

**(10) Overissuance:** means the amount by which food stamp benefits issued to a household exceed the amount the household was eligible to receive.

**(11) Period of intended use:** means the month in which the benefits are issued if issued before the 20th of the month. For benefits issued after the 20th of the month, the period of intended use is the rest of the month and the following month.

**(12) Principal wage earner:** means the household member with the greatest amount of earned income in the two months preceding a determination that a program rule has been violated. This applies only if the employment involves 20 hours or more a week or pays wages equivalent to the federal minimum wage multiplied by 20 hours. In making this evaluation, the entire household membership shall be considered, even those who are excluded or disqualified but whose income must be counted for eligibility and benefit amount determination. For purposes of determining noncompliance with the food stamp work requirements, including E&T components, voluntary quit, and work-fare, the head of household is the principal wage earner unless the household has selected an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the designated head of household as agreed upon by all adult members of the household. A person of any age shall not be considered the principal wage earner if they are living with a parent or person fulfilling the role of parent, if the parent or parent-substitute is:

- (a) registered for employment;
- (b) exempt because of Title IV compliance;
- (c) in receipt of UCB or is registered as part of the UCB process; or
- (d) employed or self-employed a minimum of 30 hours a week or receiving income at the federal minimum hourly rate multiplied by 30 hours.

**(13) Project area:** means the county office or similar political subdivision designated as the unit for FSP operations.

**(14) Prospective budgeting:** means the computation of a household's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

**(15) Quality control (QC):** federally mandated as part of the performance

reporting system whereby each state agency is required to review a sample of active cases for eligibility and benefit issuance, and to review a sample of negative cases for correct application of policy. The objectives are to determine a state's compliance with the Food Stamp Act and CFR regulations, and to establish the basis for a state's error rate, corrective action to avoid future errors, and liability for errors in excess of national standards, or eligibility for enhanced federal funding if the error rate is below national standards.

**(16) Quarterly reporting:** means a reporting requirement that allows a 12-month certification period and requires a household to submit a report form every third month during the certification period. These households are required to report changes only at each quarterly report.

**(17) Real property:** means land, buildings, and whatever is built on or affixed to the land.

**(18) Recipient:** means a person receiving food stamp benefits. (same as a participant.)

**(19) Refugee:** means a lawfully admitted individual granted conditional entry into the U.S.

**(20) Reasonable compensation:** means a boarder payment, in cash, equivalent to the MFSA for the number of boarders.

**(21) Regular reporting:** means a reporting requirement in which a household is not required to meet [~~Quarterly~~] semiannual reporting requirements, and must report [~~changes~~] a change within 10 days of the date the change becomes known to the household.

**(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for an allowable expense.**

**(b) A non-financial change, including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.**

**(22) Retail food store:** [~~"Retail Food Store"~~] means:

**(a)** an establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry, is more than 50 percent staple food items for home preparation and consumption;

**(b)** public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic

treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics;

**(c)** public or private nonprofit group living arrangements, or public or private nonprofit shelters for battered women and children, or public or private nonprofit establishments, approved by HSD, or a local agency, that feed homeless persons;

**(d)** any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; a farmer's market.

**(23) Retrospective budgeting:** means the computation of a household's benefits for an issuance month based on actual income and circumstances that existed in the previous month, the "budget" month.

**(24) Self-employed:** an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. The individual is not eligible to draw UCB by virtue of their job efforts.

**(25) Semiannual reporting:** means a reporting requirement that allows a 12-month certification period and requires a household to submit a report in the sixth month of the certification period. During the certification period, a household on semiannual reporting is only required to report when the household's income reaches or exceeds 130% of the federal poverty guideline for the size of the household.

**(25) (26) Shelter for battered women and children:** means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

**(26) (27) Sponsor:** means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

**(27) (28) Sponsored alien:** means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Subsection 101(a)(15) and Subsection 101(a)(2) of the Immigration and Nationality Act.

**(28) (29) Spouse:** means either of two individuals who:

**(a)** would be defined as married to each other under applicable state law; or

**(b)** are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

**(29) (30) Standard utility allowance (SUA):** means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity (apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

**(30) (31) State wage information collection agency:** the wage information collection agency for the state of New Mexico is the department of labor (DOL), employment security division (ESD) which administers the state employment compensation law and which provides a quarterly report of employment related income and eligibility data.

**(31) (32) Striker:** means anyone involved in a strike or concerted work stoppage by employees (including stoppage due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

**(32) (33) Student:** means an individual attending school at least half time, as defined by the institution; any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

**(33) (34) Supplemental security income (SSI):** means monthly cash payments made under the authority of:

**(a)** Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

**(b)** section 1616(a) of the Social Security Act; or

**(c)** section 212(a) of P.L. 93-66.

**(34) (35) SSI household:** means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for food stamps through a social security office. The application must be forwarded to the appropriate food stamp (ISD) office for processing. SSI households are categorically eligible.

**(35) (36) Supplementary unemployment benefits (SUB):** part of the guaranteed annual wage provisions in the auto industry whereby the company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

**(36) (37) Thrifty food plan (TFP):** see maximum food stamp allotment.

**(37) (38) Transitional housing:** housing is transitional if its purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of hous-

ing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

~~[(38)]~~ **(39) Vehicles:** means a mode of transportation for the conveyance of passengers to or from employment, daily living, or for the transportation of goods. For purposes of the food stamp program boats, trailers, and mobile homes shall not be considered as vehicles.

~~[(39)]~~ **(40) Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application. [8.139.100.7 NMAC – Rn, 8.139.650.7 NMAC & A, 02/14/2002; A, 01/01/2004]

### 8.139.100.8 ABBREVIATIONS & ACRONYMS:

#### A. Abbreviations and acronyms:

**(1) ABAWD:** able bodied adults without dependents

**(2) AFDC:** aid to families with dependent children (replaced by TANF effective July 1, 1997)

**(3) BIA-GA:** bureau of Indian affairs-general assistance

**(4) CA:** cash assistance (same as financial assistance)

**(5) CE:** categorical eligibility or categorically eligible

**(6) CFR:** code of federal regulations

**(7) CPI-U:** consumer price index for urban consumers

**(8) CS:** child support

**(9) CSED:** child support enforcement division

**(10) CYFD:** (New Mexico) children youth & families department

**(11) DOH:** (New Mexico) department of health

**(12) DOJ:** (United States) department of justice

**(13) DOL:** department of labor (formerly ESD)

**(14) DOT:** dictionary of occupational titles

**(15) DRIPS:** disqualified recipient information processing system

**(16) E&T:** employment and training

**(17) EBT:** electronic benefit transfer

**(18) EC:** employment counselor

**(19) EI:** earned income

**(20) EW:** eligibility worker (now FAA or caseworker)

**(21) FA:** financial assistance (same as cash assistance)

**(22) FAA:** family assistance analyst (caseworker)

**(23) FCS:** food and consumer services of the USDA, now FNS

**(24) FFY:** federal fiscal year

**(25) FMV:** fair market value

**(26) FNS:** food and nutrition service [~~(now the FCS)~~]

**(27) FSP:** food stamp program

**(28) GA:** general assistance

**(29) GED:** general equivalency degree

**(30) HHS:** (U.S. dept. of) health and human services

**(31) HSD:** (New Mexico) human services department

**(32) HUD:** (U.S. dept. of) housing and urban development

**(33) IEVS:** income and eligibility verification system

**(34) INS:** (U.S.) immigration and naturalization service

**(35) IPV:** intentional program violation

**(36) ISD:** (HSD) income support division

**(37) ISD2:** integrated services delivery for ISD

**(38) ISS:** income support specialist (now FAA or caseworker)

**(39) JOBS:** jobs opportunities and basic skills (a work program under AFDC)

**(40) JTPA:** Job Training Partnership Act (now WIA)

**(41) LIHEAP:** low income home energy assistance program

**(42) LITAP:** low income telephone assistance program

**(43) MFSA:** maximum food stamp allotment (benefit amount)

**(44) MRRB:** monthly reporting and retrospective budgeting

**(45) MVD:** (New Mexico) motor vehicle division

**(46) NADA:** national automobile dealers association

**(47) NFA:** nonfinancial assistance (same as non-cash assistance (NCA))

**(48) NMW:** New Mexico works

**(49) QC:** quality control

**(50) QR:** quarterly reporting or quarterly reporters

**(51) RR:** regular reporting or regular reporters

**(52) RSVP:** retired seniors volunteer program

**(53) SAVE:** systematic alien verification for entitlements

**(54) SR:** semiannual reporting

~~[(54)]~~ **(55) SSA:** social security administration

~~[(55)]~~ **(56) SSI:** supplemental security income

~~[(56)]~~ **(57) SSN:** social security number

~~[(57)]~~ **(58) SUA:** standard utility allowance

~~[(58)]~~ **(59) SWICA:** state wage information collection agency

~~[(59)]~~ **(60) TANF:** temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act)

~~[(60)]~~ **(61) TAPP:** tribal assistance project program (Navajo)

~~[(61)]~~ **(62) TFP:** thrifty food plan (now the maximum food stamp allotment)

~~[(62)]~~ **(63) UCB:** unemployment compensation benefits

~~[(63)]~~ **(64) USDA:** U. S. department of agriculture

~~[(64)]~~ **(65) VA:** veterans administration

~~[(65)]~~ **(66) WIA:** Workforce Investment Act (formally JTPA)

B. [Reserved]

[8.139.100.8 NMAC – Rn, 8.139.650.8 NMAC & A, 02/14/2002; A, 01/01/2004]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**This is an amendment to 8.139.110 NMAC, Section 11. This amendment replaces quarterly reporting with semi-annual reporting requirements for food stamp households, and adds clarification of the verification standards for food stamp applicants.**

### 8.139.110.11 INTERVIEWS

**A. Purpose and scope of interview:** The interview is an official and confidential discussion of household circumstances with the applicant. It is intended to provide the applicant with program information, and the worker with the facts needed to make a reasonable eligibility determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear and incomplete information. The scope of the interview shall not extend beyond examination of the applicant's circumstances that directly relate to determining eligibility and benefit amounts. The interview shall be held prior to disposition of the application.

**B. Joint cash assistance/food stamp interview:** At initial application for cash assistance (CA), a single interview shall be conducted concurrently for both cash assistance and food stamp benefits if the client wishes to apply for both programs. Federal food stamp regulations specifically provide that applicants for both programs shall not be required to see a different caseworker or be otherwise subjected to two interviews in order to obtain the benefits of both programs. Following the single interview, the applica-

tion may be processed by separate workers to determine eligibility for food stamp benefits and cash assistance. In an expedited food stamp certification situation, a second interview is permitted if an immediate interview for cash assistance cannot be arranged.

**C. Individuals interviewed:** Applicants, including those who submit applications by mail, shall be interviewed in person at the local ISD office. When circumstances warrant, the household shall be interviewed by telephone, or at another place reasonably accessible and agreeable to both the applicant and the caseworker. The applicant may bring any person he chooses to the interview.

**D. Out of office interviews:**

(1) A food stamp applicant shall not be required to have an office interview if the applicant is unable to appoint an authorized representative and the household has no member(s) able to come to the food stamp office because the member(s) is elderly or disabled, as defined.

(2) The office interview can also be waived if requested by any household that is unable to appoint an authorized representative who is willing and able to perform this function, and who lives in a location not served by a certification office. The county director may also waive the office interview on a case-by-case basis as circumstances warrant.

**(2) (3) Hardship conditions:** The office interview shall also be waived when no household member is able to come to the office because of transportation difficulties or similar hardship. Hardship conditions include, but are not limited to, illness, care of a household member, residence in a rural area, prolonged severe weather, or work or training hours that prevent the household from attending an office interview.

**E. Face-to-face/telephone interviews:** A household shall have a face-to-face interview at initial certification and at least once every 12 months thereafter.

(1) A household certified for longer than 12 months is excluded.

(2) At recertification, a household is considered to have met the face-to-face requirement when alternative recertification interviews are conducted by telephone.

(3) No household shall have the face-to-face interview waived for two consecutive recertifications.

**F. Applicant information:** During the application interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy.

(1) **Providing information:** The caseworker shall explain all program infor-

mation and that, to the best of ~~their~~ his/her ability, the caseworker is available to assist the household in gathering information.

(2) All applicants shall be provided with the following information:

(a) ISD's nondiscrimination policy and procedures;

(b) complaint and fair hearing procedures and clients' rights;

(c) program procedures, including the use of IEVS, SDX, BENDEX information, and CSED and MVD interfaces;

(d) application processing standards, including time limits;

(e) procedures in cases of over-issuance or under-issuance;

(f) regular reporting household's responsibility to report changes within ten days of the date the change becomes known to the household;

(g) ~~Quarterly Reporting requirements for those households with earned income and recent work history~~ semiannual reporting requirements for those household assigned to semiannual reporting including the:

(i) requirement to submit a semiannual report in the sixth month of the food stamp certification period;

(ii) requirement to report by the tenth day of the month following the month the household income exceeds 130% of federal poverty guidelines for the size of the household; and

(iii) option to report a change between reporting periods if the household thinks that it will result in an increase in food stamp benefits.

(h) requirement for cooperation with quality control reviewers (QC), including penalties for non-cooperation;

(i) work requirements and penalties for non-cooperation, including voluntary quit and associated penalties;

(j) responsibility to contact the local ISD office to reschedule missed appointments; and

(k) exemption from gross receipts tax collection by the retailer on eligible food purchased with food stamp benefits.

**(2) Fair hearing information:**

**(a) Notification of right to request hearing:** At the time of application each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or representative, such as a legal counsel, relative, friend or other individual.

**(b) Periodic notification:** At any time a household informs the local office that it disagrees with an HSD action, the household shall be reminded of the right to request a fair hearing.

**(c) Forwarding hearing request:** A request for a hearing made

either orally or in writing by a household or representative shall be forwarded to the fair hearings bureau. If it is unclear from a request what action a household or representative wishes to appeal, a clarification may be requested by HSD. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

**(d) Providing a hearing:** The fair hearing process shall be available to any household which feels an action taken by HSD is incorrect, and which affects participation of the household in the food stamp program.

**(e) Other representation:** If there is an individual or organization available that provides free legal representation, the household shall be informed of the availability of that source.

**(3) Agency conference information:** A household shall be informed of the availability of an agency conference to resolve a dispute. HSD shall schedule an agency conference for a household when a dispute arises.

**(a) Denial of expedited service:** An agency conference shall be offered to a household which wishes to contest a denial of expedited service. An agency conference for such a household shall be scheduled within two (2) working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

**(b) Adverse actions:** HSD may also offer an agency conference to a household adversely affected by an HSD action.

**(c) Use of agency conference:** HSD shall inform a household that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process.

**G. Scheduling interviews:** The interview on an initial application shall be scheduled within ten (10) working days, and, to the extent possible, at a time that is most convenient for the applicant.

**H. Missed interviews:** HSD shall notify a household that it missed its first interview appointment and that the household is responsible for rescheduling a missed interview. If the household contacts the caseworker within the 30-day application-processing period, the caseworker shall schedule a second interview. When the applicant contacts the local ISD office, either orally or in writing, the caseworker shall reschedule the interview as soon thereafter as possible within the 30-day processing period, without requiring the applicant to provide good cause for failing to appear. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall be denied on the 30th day (or the next work day) after the

application was filed (see Section 8.139.110.12 NMAC).

**I. Verification standards:** Verification is use of third-party information or documentation to establish the accuracy of statements on the application, or information provided by the applicant or recipient.

**(1) Initial certification:** Verification is mandatory for the following information prior to initial certification for both new and reopened cases.

**(a) Financial information:**  
(i) gross nonexempt income, and

(ii) resources.

**(b) Any of the following if the expense would result in a deduction:**

(i) ~~[actual]~~ utility expenses;

(ii) continuing shelter expenses;

(iii) dependent care expenses;

(iv) deductible medical expenses including the amount of reimbursements;

(v) legally obligated child support expenses, and amount actually paid.

(vi) If any of the above expenses will not result in a deduction, verification shall not be required (for example, less than \$35 in medical expenses, or shelter expenses that do not exceed 50% of income after all other deductions).

**(c) Nonfinancial information:**

(i) residence,

(ii) citizenship, if questionable, and alien status of household members only;

(iii) identity of the applicant and authorized representative, if designated;

(iv) ~~[if designated]~~ household size and composition ~~[and any other information, if questionable]~~;

(v) disability, if necessary; ~~[and]~~

(vi) social security numbers~~[-]~~, except that eligibility or issuance of benefits shall not be delayed solely to verify the social security number of a household member, and

(vii) ~~[Eligibility or issuance of benefits shall not be delayed solely to verify the social security number of a household member.]~~ any questionable information that must be verified to determine eligibility.

**(2) Recertification:** Verification of the following is mandatory at recertification or for cases reopened within 30 days of expiration:

(a) a change in income if the source has changed or the amount has

changed by more than ~~[\$25.00]~~ \$50.00.

(b) a change in ~~[actual]~~ utility expenses if the source has changed ~~[or the amount has changed by more than \$25.00]~~.

(c) previously unreported medical expenses, and total recurring medical expenses which have changed by more than \$25.00.

(d) new social security numbers shall be verified as detailed in 8.139.410.8 NMAC.

(e) any other information which has changed or is questionable.

(f) unchanged information shall not be reverified unless it is incomplete, inaccurate, inconsistent, or outdated.

**(3) ~~[Quarterly Reporting: The verification standards for Quarterly Reporting is set forth at 8.139.120.9 NMAC]~~ Semiannual reporting: Verification standards for those households assigned to semiannual reporting are set forth at 8.139.120.9 NMAC.**

**(4) Providing verification:**

(a) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.

(b) The caseworker shall assist a household in obtaining verification, provided the household is cooperating in the application process.

(c) A household may supply documentary evidence in person, through the mail or through an authorized representative.

(d) A household shall not be required to supply verification in person at the food stamp office or to schedule an appointment to provide such verification.

(e) The caseworker shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

**(5) Designating a collateral contact:**

(a) Whenever evidence is insufficient to make a firm determination of eligibility or benefit amount, or cannot be obtained, the caseworker may require a collateral contact or a home visit.

(b) The caseworker shall rely on the household to provide the name of a collateral contact.

(c) A household may request assistance in designating a collateral contact.

(d) The caseworker shall not be required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide accurate third-party verification.

(e) When a collateral contact des-

ignated by the household is unacceptable, the caseworker shall either designate another collateral contact, ask the household to designate another collateral contact, or provide another alternative form of verification such as a home visit.

(f) The caseworker is responsible for obtaining verification from acceptable collateral contacts.

**(6) Documentation:** A case file shall be documented to support eligibility, ineligibility, and benefit amount determination. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

[02/01/95, 06/01/95, 10/01/95, 06/01/99; 8.139.110.11 NMAC - Rn, 8 NMAC 3.FSP.113, 05/01/2001; A, 02/14/2002; A, 01/01/2004]

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

**This is an amendment to 8.139.120 NMAC to repeal the quarterly reporting requirement and implement a semiannual reporting requirement for certain households that receive food stamp benefits.**

**8.139.120.9 ~~[QUARTERLY REPORTING: Quarterly Reporting is a reporting requirement for certain households that receive food stamps.~~**

**~~A. Certification Period: A household subject to Quarterly Reporting:~~**

~~(1) Shall be assigned a 12-month certification period.~~

~~(2) Shall remain subject to Quarterly Reporting throughout the certification period.~~

**~~B. Quarterly Reporting Households: The Quarterly Reporting requirements shall apply to a household:~~**

~~(1) with earned income;~~  
~~(2) with a recent history of earned income that is defined as:~~

~~(a) a member has had employment in the past 6 months; or~~

~~(b) a member is currently receiving Unemployment Compensation Benefits.~~

**~~C. Households Excluded from Quarterly Reporting: The Quarterly Reporting Requirements shall not apply to:~~**

~~(1) a migrant and seasonal farm worker household;~~

~~(2) a household in which all members are homeless;~~

~~(3) a household with no earned income or no recent history of earned income;~~

~~(4) a household in which all mem-~~

bers are elderly or disabled, and

~~(5) a household whose only income is from self employment;~~

**D. Transition to/from Quarterly Reporting:**

(1) A household shall be transitioned to or from the Quarterly Reporting requirement at application or recertification.

(2) A household whose status changes to Quarterly Reporting because of a change in household composition shall be transitioned to Quarterly Reporting effective the month following the month the change is reported.

(i) A household whose certification period is less than 12 months at the time the household's status changes to Quarterly Reporting shall be assigned a 12-month certification period beginning with the first month of the previous certification period. The household shall be subject to Quarterly Reporting for the remainder of the certification period.

(ii) A household whose certification period is for longer than 12 months at the time the household's status changes to Quarterly Reporting shall be subject to Quarterly Reporting for the remainder of the assigned certification period.

**E. Quarterly Reporting Requirement:** A household shall be required to report at intervals set forth in Subsection G of 8.139.120.9 NMAC and verify:

(1) a change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(2) money from employment;

(3) unearned income;

(4) opening of a savings or checking account;

(5) resources which exceed the resource limit;

(6) dependent care expense; and

(7) change in residence and the change in shelter and utility expenses.

(8) changes in medical expenses;

(9) changes in child support obligation;

**F. Budgeting Methodology for Quarterly Reporting:**

(1) **Initial Application:** Prospective budgeting shall be used for an applicant household at initial application and at recertification as set forth at 8.139.500.9 NMAC.

(2) **Prospective Budgeting:**

(a) Methodology for determining eligibility and payment for processing a Quarterly Report is specified in this Subsection.

(b) Eligibility for the Food Stamp Program is determined prospectively as set forth in 8.139.500.9 NMAC.

(c) Eligibility and amount of pay-

ment shall be determined prospectively for each month in the certification period.

~~(3) Changes in Household Composition:~~ A person added to a household shall have eligibility determined prospectively beginning in the month following the month the report is made.

~~(4) Anticipating Income:~~ In determining a household's eligibility and payment amount, the income already received and any income a household expects to receive during the certification period shall be used.

(a) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(b) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(c) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(d) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(e) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to achieve a uniform amount for projecting.

~~(5) Earned Income:~~

(a) Income from the month prior to the month the Quarterly Report is due shall be used to project monthly income, provided that the income is expected to continue.

(i) If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used.

(ii) If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(b) None of the methods described above may give the most accurate estimate of monthly earnings due to unique circumstances which may occur. In such cases, the caseworker shall use whatever method gives the most accurate estimate of earnings.

(c) An income projection shall be considered valid for the period between when Quarterly Reports are due.

~~(6) Income Received Less Frequently than Monthly:~~ The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to

cover. This includes, but is not limited to, income from sharecropping, farming, and self-employment. It includes contract income as well as income for a tenured teacher who may not actually have a contract.

~~(7) Contract Income:~~ A household that derives its annual income in a period of less than one year shall have that income averaged over a 12 month period, provided that the income is not received on an hourly or piecework basis. Contract income that is annualized shall only be verified when a new contract is established.

~~(8) Using Exact Income:~~ Exact income, rather than averaged income, shall be used if income is received more frequently than weekly.

~~(9) Self Employment:~~

(a) Determination of self-employment income is set forth at Subsection E of 8.139.520.10 NMAC. Verification standards of business and self-employment income is set forth at Paragraph (2) of Subsection B of 8.100.130.14 NMAC.

(b) A household subject to Quarterly Reporting requirements, and self-employment is annualized, shall not be required to report changes in the self-employment income. Only the income received from other sources shall be subject to Quarterly Reporting requirements as set forth in this section.

(c) If significant changes have occurred because of a substantial increase or decrease in business and averaged income will not accurately reflect the self-employed individuals' income, the self-employment income shall be calculated on the basis of anticipated, not prior, earnings.

(d) A household subject to Quarterly Reporting Requirements and the self-employment is not annualized shall be subject to reporting self-employment income on the Quarterly Report.

(i) If a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year.

(ii) If the self-employment enterprise has been in operation for such a short time that there is insufficient information to make a reasonable projection, a household shall be required to report income at shorter intervals until there is enough information to make a longer projection of anticipated income.

(iii) **Seasonal Income:** Self-employment income that is intended to meet a household's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

~~(c) Determining Monthly~~

**Business or Self-Employment Income:**

For the period of time over which self-employment income is averaged, the individual's monthly self-employment income is determined by adding all self-employment income, including capital gains, and excluding allowable costs of producing the self-employment income, and dividing the resulting self-employment income by the number of months over which the income will be averaged.

(f) A household that fails to provide verification of an allowable deduction with the Quarterly Report shall not be allowed the deduction. The caseworker shall process the report if all mandatory verification has been provided.

**(10) Unearned Income:** For purposes of anticipating future income, unearned income from the month prior to the month the report is due shall be used, provided that the income is expected to continue.

**(11) Use of Conversion Factors:** Conversion factors shall be used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equally for the months in the certification period or the Quarterly Reporting period.

(a) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.

(b) Income received weekly shall be multiplied by 4.3.

(c) Income received biweekly shall be multiplied by 2.15.

**(12) Rounding of Income When Using Conversion Factors:** Averaged income shall be rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

**G. Time Limits for Submission and Processing a Quarterly Report**

(1) The first month of the Quarterly Report period shall begin in the month of approval or the first month of the certification period.

(2) The Quarterly Report form shall be mailed to a household in the month prior to the date the report is due.

(3) A household shall be required to return a completed Quarterly Report by the fifth calendar day of the month the Quarterly Report is due. If the fifth calendar day falls on a weekend or holiday the Quarterly Report shall be due the next working day.

(a) The first food stamp Quarterly Report shall be due the second month following the month of approval.

(b) A household shall be required to submit a Quarterly Report:

(i) by the fifth calendar day of a month a Quarterly Report is due; and

(ii) every three months thereafter for the duration of the certification period.

(4) The caseworker shall review the Quarterly Report and verification for completeness within 10 days of receipt of a Quarterly Report form;

(a) If the form is complete and all verification provided to process the Quarterly Report form, the caseworker shall complete the processing of the form within 10 days of receipt.

(b) If the form is incomplete, lacking verification, or questionable verification is provided, the caseworker shall notify the household in writing of what needs to be completed or verification which needs to be provided.

(i) A Quarterly Report form that is incomplete or not signed shall be returned to the household for completion.

(ii) A Quarterly Report form that is complete, but is lacking sufficient verification to process, shall be maintained in the case file and written notification sent to the household of the verification needed to process the report.

(5) A notice shall be issued to a household by the 20th day of the month in which a report is due, to notify a household that a completed Quarterly Report has not been received by the household.

(6) A household that fails to submit a complete Quarterly Report form by the end of the month in which it is due, shall be issued an adequate notice of closure.

**H. Form Requirements for Quarterly Reporting:** The Quarterly Report form shall specify:

(1) the date by which a household must submit the form for continued receipt of timely benefits;

(2) the consequences of submitting a late or incomplete form;

(3) that verification must be submitted with the Quarterly Report;

(4) where to call for help in completing the form; and

(5) consequences for providing incorrect information.

**I. Reporting Requirements Between Quarterly Reports:**

(1) A Quarterly Reporting household shall not be required to report changes subject to the Quarterly Reporting requirement as found in Subsection E of 8.139.120.9 NMAC prior to the date the Quarterly Report form is due or during the period in between Quarterly Reports. These

include:

(a) a change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(b) money from employment;

(c) unearned income;

(d) purchase of a vehicle;

(e) opening of a savings or checking account;

(f) resources which exceed the resource limit;

(g) dependent care expense; and

(h) change in residence and the change in shelter and utility expenses.

(2) Changes reported prior to the date the Quarterly Report is due shall be processed according to change processing requirements as found in 8.139.120.10 NMAC.

**J. Disaster Victims:** A household certified under the ongoing Food Stamp Program and subject to Quarterly Reporting, shall be required to comply with Quarterly Reporting requirements during the disaster period. The household is responsible for submitting the required information as outlined in 8.139.120.9 NMAC, to the office that handles its ongoing ease.]

**SEMIANNUAL REPORTING:** Semiannual reporting is a reporting requirement for households that receive food stamp benefits, unless an exclusion applies.

**A. Excluded from semi-annual reporting:** The following households are excluded from semiannual reporting:

(1) a household in which all members are migrant or seasonal farm workers;

(2) a household in which all members are homeless;

(3) a household in which all members are elderly or disabled with no earned income;

(4) a household in which all members are ABAWDs with no earned income or unearned income;

(5) a household in which all adult members:

(a) receive unearned income from a source other than TANF, GA or UCB; and

(b) have no history of earned income in the six months prior to application or recertification;

(6) a household determined by the county director or designee to have insufficient stability and warrants an alternative reporting requirement; an unstable household may include but is not limited to:

(a) a household that reports an imminent change in residence to another state;

(b) a household that reports income insufficient to meet ongoing debt obligations.

(c) A household that is assigned to an alternative reporting requirement because of instability, shall be certified for no longer than three months.

**B. Certification period:**

A household assigned to semiannual reporting:

(1) shall be assigned a 12-month certification period; and

(2) shall remain subject to semiannual reporting for the assigned certification period.

**C. Transition to semiannual reporting:**

A household assigned to quarterly reporting shall be transitioned to semiannual reporting in the following manner.

(1) A household whose first quarterly report is due in January, February or March 2004 shall not be required to file a quarterly report form, but shall be required to file a semiannual report form in April, May, and June 2004, respectively.

(2) A household whose second quarterly report is due in January, February, or March 2004 shall be required to file a semiannual report form in January, February, or March 2004, respectively.

(3) A household that has its third quarterly report due in January, February, or March 2004 shall not be required to submit a quarterly reporting or semiannual reporting form. The household shall be required to file an application for recertification at the end of the certification period.

**D. Applicant household:**

A household that is approved for food stamp benefits on or after January 1, 2004 and is assigned to semiannual reporting shall be assigned a 12-month certification period that begins in the month of application and shall have a semiannual report due in the sixth month of the household's certification period.

**E. Participating household:**

A participating household not assigned to semiannual reporting that is subsequently assigned to semiannual reporting because of a reported change shall be transitioned at the end of the certification period in effect when the change occurred.

**F. Reporting requirements for semiannual reporting households:**

A household subject to semiannual reporting shall be required to file a semiannual report no later than the tenth day of the sixth month of the 12-month certification period. The following information, along with verification, must be provided with the report:

(1) any change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(2) the gross monthly income received from employment by each house-

hold member;

(3) the gross monthly unearned income received by each household member;

(4) changes in countable resources if the total of all countable resources for the food stamp household exceeds the applicable resource limit, such as but not limited to:

(a) the account number and balance for a new checking or savings account belonging to any household member; or

(b) the amount of any new stocks or bonds or other financial instruments belonging to any household member.

(5) dependent care expenses;

(6) expenses for shelter, utilities, and telephone, only if a change has occurred since the last certification, or a change will occur in the month following the month the report is due, including but not limited to:

(a) a change in residence;

(b) a change in shelter expense;

(c) a change in billing for utilities, but not including variances in utility bills from month to month for the same service; or

(d) an increase in shelter expenses that will take place in the month following the report month; or

(e) a termination of any shelter utility, or telephone expense; or

(f) a new shelter or utility expense.

(7) a change in medical expenses;

(8) a change in child support obligations;

(9) student status for anyone living in the home over the age of 17 years, including but not limited to:

(a) a change in status from non-college to college student;

(b) a change in status from college student to non-college student;

(c) a change in post-secondary curriculum to or from at least halftime; and

(d) participation in or termination of work study.

(10) a change in immigrant (alien) status for a household member.

**G. Budgeting methodology for semiannual reporting at initial application and recertification:**

(1) Prospective budgeting shall be used for an applicant household at initial application and at recertification as set forth at 8.139.500.9 NMAC.

(2) Initial application: At approval, eligibility and amount of payment for the applicant household shall be determined prospectively for the each of the first six months of the certification.

(3) Recertification: At approval, eligibility and amount of payment shall be determined prospectively for each of the six months following the last month

of the previous certification period.

**H. Budgeting methodology for processing a semiannual report:**

(1) Processing the semiannual report: Eligibility and food stamp benefit amount shall be determined prospectively for the six months following the month the semiannual report is due.

(2) Determining a household's eligibility and food stamp benefit amount:

(a) Weekly: For income received weekly, the household must submit and the department shall accept as verification of income, pay data for any consecutive four week pay periods that fall within the month prior to the month the report is due and the month the report is due;

(b) Bi-weekly: For income received bi-weekly, the household must submit and the department shall accept as verification of income, pay data for any two consecutive pay periods within the month prior to the month the report is due and the month the report is due;

(c) Semi-monthly: For income received semi-monthly, the household must submit and the department shall accept as verification of income, pay data for any two consecutive pay periods within the month prior to the month the report is due and the month the report is due;

(d) Monthly: For income received monthly, the recipient household must submit and the department shall accept as verification of income, pay data for one pay date within the month prior to the month the report is due and the month the report is due.

(e) Income received more frequently than weekly: For households with income received more often than weekly:

(i) exact income rather than averaged and converted income shall be used to determine eligibility and food stamp benefit amount; and

(ii) the household must submit, and the department shall accept as verification of income, pay data in any consecutive 30 day period within the month prior to the month the semiannual report is due and the month the report is due.

(f) If a determination is made that the use of the pay data for the budgeting methods described in (a) through (e), above, does not give the most accurate estimate of monthly earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

(3) Income received less frequently than monthly: The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the



number of months the income is intended to cover, including but is not limited to income sources from sharecropping, farming, self-employment, contract income and income for a tenured teacher who may not have a contract.

**(4) Self-employment:**

**(a)** Requirements for determination of net self-employment income are set forth at Subsection E of 8.139.520.10 NMAC, and the verification standards for business and self-employment income are set forth at Subsection B of 8.100.130.14 NMAC.

**(b)** A household assigned to semi-annual reporting that has its self-employment income annualized shall be required to report changes in self-employment income on the semiannual report if the household has filed a tax return after its last approval or recertification of food stamps.

**(c)** A household assigned to semi-annual reporting whose self-employment income is not annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner.

**(i)** When a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the six-month period covered by the semiannual report.

**(ii) Seasonal income:** Self-employment income that is intended to meet a household's needs for only part of the year shall be averaged over the time the income is intended to cover.

**(d)** A household that fails to provide verification of an allowable deduction shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

**(5) Use of conversion factors:**

**(a)** Conversion factors shall be used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:

**(i)** the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and

**(ii)** biweekly amounts by 2.15.

**(b)** Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received.

**(c)** Instead, the amount of the extra paycheck is averaged over the certification period.

**(6) Rounding of income when**

**using conversion factors:** Averaged income shall be rounded prior to the application of the conversion factor. If the cents are \$.49 or less, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

**I. Time limits for processing a semiannual report received by the county office:**

**(1)** The semiannual report form and all verification provided shall be reviewed for completeness within ten days of receipt.

**(a)** A form that is complete and all verifications are provided, shall be processed within ten days of receipt.

**(b)** A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall not be processed. The household:

**(i)** shall be notified that verification is lacking; and

**(ii)** shall be given ten days to provide verification of an allowable deduction.

**(c)** A deduction that is verified within the month the semiannual report is due shall be processed as part of the semiannual report.

**(d)** A deduction that is verified in the month after the semiannual report is due shall be processed as a change reported by the household.

**(e)** A deduction that does not have the required verification shall not be allowed until verification of the expense is provided.

**(2) Incomplete semiannual report is received:**

**(a)** A semiannual report form that is not signed shall be returned to the household for a signature.

**(b)** A semiannual report that is incomplete because required verification is not provided shall not be returned to the household. The household shall be notified that the form is incomplete and what information must be provided to complete the semiannual report.

**(3)** A household must return the completed semiannual report form by the end of the month in which the report is due in order to process the report for the following month.

**J.** A household that fails to submit a semiannual report by the end of the month in which the report is due shall lose its right to uninterrupted benefits and shall be issued an adequate notice of closure.

**K. Information requirements for the semiannual report:** The semiannual report form shall specify:

**(1)** the deadline date to submit the form to ensure uninterrupted benefits if the household is determined eligible;

**(2)** the consequences of submitting a late or incomplete form;

**(3)** that verification of an allowable expense must be submitted with the semiannual report, or the household may not be allowed a deduction;

**(4)** where to call for help in completing the form;

**(5)** the consequences of providing incorrect information;

**(6)** the notice of rights.

**L. Disaster victims:** A household participating in the food stamp program and subject to semiannual reporting shall be required to comply with semiannual reporting requirements during the disaster period. The household remains responsible for submitting the required information set forth in 8.139.120.9 NMAC, to the field office that handles its ongoing case.

**M. Reporting requirement for semiannual reporting:** A household assigned to semiannual reporting shall only be required to report when the household's income exceeds 130% of the federal poverty guidelines for the size of the household. A household is required to report the change no later than ten calendar days from the end of the calendar month in which the change occurred.

**N. Action on changes reported between reporting periods for households assigned to semiannual reporting:**

**(1)** The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

**(a)** a household reports income in excess of 130% of federal poverty guidelines for the size of the household;

**(b)** a household reports or HSD receives documented evidence that the household has moved or intends to move out of the state on a specific date;

**(c)** a household requests closure;

**(d)** HSD receives documented evidence that the head of household has died.

**(2)** A newborn shall be added to the household effective the month following the month the change is reported, if the addition is reported to the agency by the household or by the hospital for medicaid purposes.

**(3)** The loss of earned income shall be considered for eligibility in the second month after the loss and ongoing until the next scheduled semiannual report or end of certification, whichever is first, provided that:

**(a)** the loss of income was reported and verified by the household;

**(b)** the loss of income was not due

to voluntary quit;

(c) the individual who lost the job is likely to remain unemployed in the second month after the loss of income; and

(d) the individual who lost the income cannot reasonably anticipate a replacement source of income by the end of the second month after the loss, including but not limited to, UCB, other earned income, social security (OASDI) or supplemental security income (SSI).

(e) If the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period.

(4) The loss of unearned income shall be considered for eligibility in the second month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that:

(a) the loss of income was reported to the agency, and verified by the household; and

(b) the individual who lost the unearned income cannot reasonably anticipate having the income reinstated or receiving another type of unearned income or earned income by the end of the second month after the loss.

(c) If the loss of income has been replaced with another source of income, or can reasonably be expected by the end of the second month after the loss, the replacement income shall be considered for eligibility and benefit amount in the second month after the loss and for the remainder of the certification period.

**O. Transitional food stamps:** A household assigned to semiannual reporting that is approved for transitional food stamps shall have the semiannual reporting requirements terminated during the transitional food stamp benefit period.

**P. Action on cash assistance applications:**

(1) A food stamp household assigned to semiannual reporting that is later approved for TANF cash assistance shall be required to file the scheduled semiannual report and/or to recertify eligibility at the intervals set at initial food stamp application. The timing of the TANF certification and semiannual reporting requirements shall be set to match the requirements of the food stamp program.

(2) A household assigned to semiannual reporting that is approved for TANF, GA, or EWP a day or more after food stamp approval shall have food stamp benefits adjusted in the month following the month of cash assistance approval.

[02/01/95, 10/01/95, 06/15/96, 09/14/96, 11/01/96, 07/01/98, 06/01/99; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 05/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004]

#### **8.139.120.10 CHANGE PROCESSING FOR REGULAR REPORTING HOUSEHOLDS:**

**A.** A regular reporting household includes all households not assigned to semiannual reporting. If during a certification period, changes occur that affect eligibility or benefit amount, the case-worker shall take action to adjust the household's eligibility or food stamp benefit amount.

~~[A-]~~ **B. Household responsibilities:**

**(1) At application:** An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview. Changes occurring after the interview, but before the date of the approval notice, must be reported by the household within 10 days of the date the household receives its approval notice.

**(2) Change reporting requirements ~~[for Regular Reporting Households]~~ during the certification period:** A household must report changes within ten (10) days of the date a change becomes known to the household. ~~[All households are required to report]~~ No change reporting requirements may be imposed except as provided in (a) through (f) below. A household must report:

~~(a) **Income:** Changes in the source of income, such as starting or losing a job, changing employers, or gaining or losing a source of unearned income. Households with earned income are also required to report a change in part-time or full-time employment status and a change in wage rate or salary. All households are required to report a change of more than \$25.00 in unearned income, except that changes in TANF or GA cash assistance amount, cost of living increases (COLAs), and mass changes in Social Security and SSI benefits do not have to be reported. HSD has prior knowledge of these changes and action is taken in accordance with mass change procedures in Subsection E of 8.139.120.10 NMAC.] **earned income:** a change in the source of income, including starting or stopping a job; or~~

(i) changing jobs if the change in employment results in a change in income;

(ii) a change in the amount of gross earned income received by a member of the household, if the amount changes by more than \$100 per month.

**(b) unearned income:**

(i) a change in the source of income;

(ii) a change of more than \$50 in the amount of unearned income except that changes in cost of living increases (COLAs), and mass changes in the social security and SSI benefits and changes in cash assistance amounts in programs administered by ISD including TANF, GA, EWP, and RRP do not have to be reported.

~~[(b)]~~ (c) changes in household composition, such as when an individual moves into or leaves the household;

~~[(c)]~~ (d) changes in residence and the resulting change in shelter costs;

~~[(d)]~~ (e) when cash on hand, stocks, bonds and/or money in a bank account reach or exceed \$2,000, or \$3,000 for elderly/disabled households;

~~[(e)]~~ (f) changes in the legal obligation to pay child support, including termination of the obligation; a household with less than a 3-month record of child support payments shall be required to report changes greater than \$50.00 from the amount used in the most recent certification action.

~~[(f) No change reporting requirements may be imposed except as provided in (a) through (f) above.]~~

**(3) Time limits:**

(a) The 10-day period begins with the date the change becomes known to the household. For the purposes of reporting:

(i) a financial change shall be considered as timely if the change is reported no later than 10 days after the household receives the first payment or makes the first payment attributable to the change;

(ii) a non-financial change shall be considered timely if the change is reported no later than 10 days after it occurs.

(b) The change is considered reported on the date the report of change is received by the local county office or, if mailed, the date of the postmark on the household's report plus three days mailing time[~~, whichever is earlier~~].

(c) Households shall be encouraged to use a change report form to document changes, although changes may also be reported by personal visit or telephone.

(d) In the absence of a written report, a 13-day advance notice is required if the change ~~shall~~ will result in a reduction or termination of benefits.

~~[(4) Quarterly Reporting Households]~~

~~(a) A household subject to Quarterly Reporting requirements shall not be required to report changes between Quarterly Reports.~~

~~(b) A household subject to~~

~~Quarterly Reporting shall be required to report changes on the Quarterly Report as specified 8.139.120.9 NMAC.~~

~~(e) ISD shall act on any change in accordance to Subsection B of 8.139.120.10 NMAC if a household subject to Quarterly Reporting reports and verifies a change prior to the date a Quarterly Report is due.~~

~~(5) **Reporting Medical Expenses:** A household may voluntarily report changes in medical expenses which occur during the certification period. Changes in medical expenses shall be handled in accordance with policy found in (e) of Paragraph 1 of Subsection B of 8.139.120.10 NMAC and Paragraph 6 of Subsection D of 8.139.520.11 NMAC.~~

**B-] C. HSD responsibilities:** The caseworker shall inform the household of its responsibility to report changes. The caseworker shall ~~[be required to take action on]~~ review any change reported by the household to determine if the change must be acted on and shall take the required action if the change affects eligibility or benefit amount. The caseworker shall document the date a change is reported, and whether the change affects eligibility or food stamp benefit amount.

**(1) Action on changes for regular reporting households:**

(a) When a household reports a change, the caseworker shall take action to determine the household's eligibility and/or food stamp benefit amount within ten days of the date the change is reported.

(b) For changes that result in a decrease or termination of household benefits, the caseworker shall act on the change as follows:

(i) If the caseworker receives a written report from the household that meets the standards of Subsection C of 8.139.120.11 NMAC, action shall be taken for the following month without an advance notice of adverse action. The household shall be provided with adequate notice. If the certification period will expire before the expiration notice time limit, no action shall be required to reduce or terminate benefits.

(ii) If the change is reported by any other means, e.g., by phone, in person, etc., within ten days, the caseworker shall take action to issue a notice of adverse action (Subsection B of 8.139.120.11 NMAC) to reduce or terminate benefits effective the month following the month the adverse action time limit expires. If the certification period will expire before the expiration of the adverse action time limit, no action shall be required to reduce or terminate benefits.

(c) During the certification period, the caseworker shall not act on changes in medical expenses of households eligible

for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, requires the caseworker to contact the household for verification. The caseworker shall act only on those changes in medical expenses that are learned about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

**(2) Increased benefits:**

(a) For changes resulting in an increase, other than changes described in (b) below, the caseworker shall make the change effective no later than the first benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date).

(b) For changes resulting in an increase in food stamp benefits because of the addition of a new household member who is not a member of another certified household or a decrease of \$50.00 or more in the household's gross monthly income, the caseworker shall make the change effective not later than the first food stamp benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date). In no event shall these changes take effect any later than the month following the month the change was reported. If the change is reported timely but the increase cannot be made effective the following month, the caseworker shall issue a supplement to the household in the following month.

(c) **Providing verification:** The household shall be allowed 10 days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If verification is not provided at the time a change is reported, the household shall be allowed 10 days, plus 3 days if a notice is mailed, to provide verification. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide required verification, its food stamp benefit amount shall revert to the original benefit amount.

**(3) Decreased benefits:** When a household timely reports a change which will decrease benefits, the caseworker shall issue an adverse action notice to the household (Subsection B of 8.139.120.11 NMAC). If the adverse action time limit expires in the following month, there is no overissuance in the following month and the household is entitled to the greater benefit amount. The decrease shall be effective in

the month following the month the notice expires.

**(4) Termination of benefits:**

When the household reports a change that will result in a termination of benefits, the caseworker shall issue an adverse action notice.

(a) If the adverse action time limit expires in the following month, there is no overissuance to the household in the following month and the household shall be entitled to the greater benefit amount. No claim shall be filed.

(b) If the adverse action time limit will expire after the certification period ends, action shall be taken to terminate benefits; the certification period shall be allowed to expire. The caseworker shall document the change in the case record.

**(5) No change in food stamp benefit amount:** When a reported change has no effect on the food stamp benefit amount, the caseworker shall document the change in the case file and notify the household of the receipt of the report and that there is no change in food stamp benefits.

~~(C-] D.~~ **Failure to report changes:**

(1) If the caseworker discovers that the household failed to report a change as required, the caseworker shall evaluate the change to determine whether the household received benefits to which it was not entitled. After verifying the change, the caseworker shall initiate a claim against the household for any month in which the household was overissued food stamp benefits. The first month of the overissuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Paragraph 2 of Subsection [A] B of 8.139.120.10 NMAC above.

**(2) Increased benefit amount:** When a household fails to make a timely report of a change which will result in an increased food stamp benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 days after the date the change was reported.

~~(D-] E.~~ **Other changes:**

**(1) Eligibility standard:** When a household becomes entitled to a different eligibility standard, the caseworker shall apply the new standard whenever there is a

change in household eligibility, benefit amount, or certification period, whichever occurs first.

**(2) Reconstituted household:** If members in the household separate into two or more households, the individuals who left the original household shall not be eligible for separate status in the month the change occurs. An adverse action notice is required whenever members leave the household. If the adverse action time limit expires in the month the change occurs, the individuals in the reconstituted household may be certified in the month following the month the change occurs. If the notice of adverse action time limit expires in the month following the month the change occurred, the reconstituted household shall not be certified until the month following the month the notice time limit expires.

**(3) Shortened certification period:** Whenever a determination is made that a household's certification period must be shortened, the household is entitled to an expiration notice. A household shall be informed that its certification period shall end the month following the month the expiration notice is sent. The household shall be given an opportunity to timely reapply for benefits.

**(4) Unreported changes:** The caseworker shall act on all changes of which the caseworker becomes aware. At a minimum, this means documenting changes in the case record. All discrepancies and questionable information shall be resolved to make sure that the correct food stamp benefit amount is issued to the household.

**(5) Noncompliance with program requirements or fraud:**

**(a) Intentional failure to comply or fraud:** No household shall receive an increase in food stamp benefits when its cash assistance payment is reduced for intentional failure to comply with the cash assistance program's eligibility requirements or for an act of fraud. A cash assistance program is defined a means-tested federal, state, or local welfare or public assistance program, governed by welfare or public assistance laws or regulations, which distributes public funds. Such programs include, but are not limited to, supplemental security income (SSI), TANF (Title IV-A), and federal or state general assistance (BIA-GA and GA). Failure to comply shall be determined as provided in Paragraph 3 of Subsection I of 8.139.520.9 NMAC.

**(b) Verification of recoupment:** Agencies administering means-tested, publicly funded assistance programs provide recipients with written advance notice of proposed changes in benefit amounts. Such notices provide information which shall determine if the reduction in cash assistance is because of a properly reported change in

circumstances. In most cases, the notice shall document whether the reduction is because of a recoupment of overpaid benefits resulting from intentional failure to report changes. If the notice is not detailed enough to make a determination, the agency which initiated recoupment shall be contacted to obtain the necessary information. Food stamp benefits shall not be delayed beyond normal processing standards pending the outcome of this determination.

**(c) Calculating benefits:** When a recipient's assistance benefits are decreased to recoup an overpayment, that portion of the decrease that is the recoupment shall first be identified. The recoupment is the amount of decrease attributed to the repayment of benefits overissued. If a Title IV-A recipient intentionally underreports income, the Title IV-A grant is first reduced to reflect the corrected income, then reduced further by the recoupment amount. In such a case, the food stamp calculation would reflect the Title IV-A amount reduced because of income, but not the second reduction caused by recoupment.

**[E-] E. Mass changes:** Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it. These changes include, but are not limited to, increases in excluded or deducted items or amounts. Mass changes affecting income include annual adjustments to social security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions. Information concerning mass change notice and hearing requirements are set forth in 8.100.180.15 NMAC.

**(1) Federal changes:** Authorized adjustments which may affect the food stamp benefit amount for participating households include the maximum food stamp allotment, standard deduction, excess shelter and dependent care deductions, and income eligibility standards. These changes go into effect for all households annually on October 1. Adjustments to federal standards are made prospectively.

**(2) Mass changes in federal benefits:** Cost of living increases and any other mass changes in federal benefits, such as social security and SSI benefits, shall be treated as mass changes for food stamp purposes. The human services department is responsible for automatically adjusting a household's food stamp benefit amount to reflect such a change. Households shall not be responsible for reporting these changes.

**(3) Mass changes in public assistance:** When overall adjustments to cash assistance payments are made, corresponding adjustments in food stamp benefits shall be handled as a mass change. Households shall be given advance notice

of any adjustment in the food stamp benefit amount. If a household requests a fair hearing, benefits shall continue at the former amount only if the issue being appealed is that eligibility or food stamp benefit amount was determined incorrectly.

**(4) Utility standard:** Authorized adjustments shall be effective for all October food stamp issuances. Households whose certification periods overlap annual adjustments in the ~~[Standard]~~ state's mandatory utility allowance shall be informed at the time of certification that the adjustment shall be effective in October; the household shall be informed of the adjusted benefit amount, if known at the time of certification. Adjustments in the ~~[Standard]~~ state's mandatory utility allowance are made prospectively.

**(5) Notice of mass changes:** Adverse action notices are not required for mass changes resulting from federal adjustments to eligibility standards, the maximum food stamp allotment, standard deduction, shelter deduction, and state adjustments to the mandatory utility standard. Announcement of anticipated mass changes may be made through the media, posters in ISD offices, and other likely places frequented by households, or through a general notice mailed to a participating household. When HSD makes a mass change in food stamp eligibility or benefit amount affecting the entire caseload or a part of it, affected households shall be mailed a notice of any change, reduction or termination of benefits. HSD shall issue a notice to affected households as far in advance of the household's next scheduled issuance date as is reasonably possible, but by no later than the date the affected benefit is issued.

[02/01/95, 07/01/98; 8.139.120.10 NMAC - Rn & A, 8.139.120.9 NMAC, 02/14/2002; A, 01/01/2004]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**This is an amendment to 8.139.410 NMAC, Section 12. This amendment repeals any reference to quarterly reporting and implements a semiannual reporting requirement for certain food stamp households.**

### 8.139.410.12 EMPLOYMENT, TRAINING AND WORK REGISTRATION

**A. E & T work registration:** Compliance with work registration is a prerequisite to certification and cannot be waived. Benefits may not be conditionally granted before registration of all mandatory household members, except when verifica-

tion cannot be obtained prior to the expedited service time limit. Work registration exemptions must be verified before certification.

**B. Compliance with E & T work requirements:** As a condition of eligibility for food stamps, every physically or mentally fit household member who is 16 years of age or older and under age 60, and who is determined mandatory, must comply with the work requirements of the food stamp E & T program.

**C. General conditions for participation:** No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the FSP if the individual:

(1) refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by ISD;

(2) refuses without good cause to participate in an employment and training program, to the extent required by ISD;

(3) refuses without good cause to accept an offer of employment at a site or plant not subject to a strike or lockout, at a wage not less than the higher of:

(a) the applicable federal or state minimum wage; or

(b) 80% of the wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment.

(4) refuses without good cause to provide ISD with sufficient information to allow ISD to determine the employment status or the job availability of the individual;

(5) voluntarily and without good cause:

(a) quits a job of 30 hours or more a week or a job that provided weekly earnings at least equivalent to the federal minimum wage multiplied by 30 hours; or

(b) reduces work effort, and after the reduction, the individual is working less than 30 hours a week; or

(c) fails to comply with the requirements of a workfare program.

**(6) Strike against the government:** An employee of the federal government, or state or a political subdivision of the state, who is dismissed for participating in a strike against the federal government, state or political subdivision of the state, will be considered to have voluntarily quit without good cause.

**(7) Title IV-A/unemployment compensation benefit (UCB) participants:** Individuals who fail or refuse to comply with the requirements under Title IV-A of the Social Security Act, or work requirements for individuals receiving UCB, will be considered to have failed to

comply with food stamp program E & T work requirements.

**D. Employment and training (E & T) work requirements:**

**(1) General conditions for registration:**

(a) Unless exempt, every household member age 16 through 59 must register for employment. If a household member has his/her 16th birthday within a certification period, the work registration requirement must be fulfilled as part of the next scheduled recertification process, unless the member qualifies for an exemption.

(b) An individual who does not qualify for an exemption must be registered for employment at initial certification, or when added to the food stamp household, and at least every twelve (12) months thereafter, as a condition of eligibility.

(c) An individual required to register need not be present during the registration process.

(d) Strikers whose households are eligible to apply for assistance, as defined in Subsection B of 8.139.400.11 NMAC, must register for work, unless covered by an exemption.

(e) Individuals exempt from registration may volunteer to participate in the E & T program.

**(2) Individuals exempt from registration:** The following individuals are exempt from the work registration requirement:

(a) an individual younger than 16 years of age or an individual 60 years of age or older.

(b) an individual age 16 or 17 who is not the head of household or is attending school or enrolled in an employment and training program at least half time, as defined by the school or employment and training program;

(c) an individual who is physically or mentally unfit for employment; if physical or mental unfitness is claimed but not evident, verification is required; verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or a statement from a physician or licensed or certified psychologist;

(d) a parent or other household member who is responsible for the care of a dependent child under age 6 or an incapacitated person.

(i) If the child has his/her 6th birthday during the certification period, the individual responsible for the care of the child is required to be registered as part of the next scheduled recertification, unless the individual qualifies for another exemption.

(ii) The exemption applies to the person who actually provides

the care.

(iii) The dependent child or incapacitated person need not be considered a member of the food stamp household or even reside with the household. The exemption will not apply if the dependent or incapacitated person resides with others who provide the care.

(e) an individual subject to and complying with any work requirement under Title IV of the Social Security Act, including TANF work requirements;

(f) an individual who receives unemployment compensation benefits and is subject to and complying with a federal or state unemployment compensation system; an individual who has applied for but who has not yet received UCB is exempt if required to register with the department of labor as part of the unemployment compensation application process.

(g) an individual who is a regular participant in a drug or alcohol treatment and rehabilitation program; the program must qualify for state certification as an effective rehabilitation program.

(h) an individual who is employed or self-employed and working a minimum of thirty (30) hours a week or receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours.

(i) migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days are exempt, although this does not prevent such individuals from seeking services from the E & T program.

(ii) workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage.

(j) a student who is eligible to participate in the FSP, and who is enrolled at least half time in any recognized school, high school, training program, or institution of higher education; this exemption remains in effect during normal periods of class attendance, vacations, and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer session).

(k) a household member who has made application for SSI and food stamp benefits at the social security administration, and whose application for food stamp benefits has been received by HSD, and who is determined eligible for food stamp benefits, shall be exempt from work registration until an SSI determination is made; a household member who is determined ineligible for SSI shall have the exemption from E & T work requirements evaluated at the

time of the denial of SSI.

**(3) Interim changes in status:**

**(a)** Anyone losing exempt status because of changes subject to the reporting requirements in Paragraph 2 of Subsection A of 8.139.120.9 NMAC, will be required to register when the change is reported.

**(b)** Anyone gaining or losing exempt status because of changes not subject to the reporting requirements in Paragraph 2 of Subsection A of 8.139.120.9 NMAC, will have his/her work status evaluated at the next recertification.

**(4) Processing changes:** Mandatory work participants who move out of a project area retain their work registration status at their new location, unless they become exempt.

**(5) Residing in a non-work program county:**

**(a)** The appropriate work registration code of any individual living in a project area which does not administer a work program through income support division, and who is not exempt from E & T work registration, will be entered into the individual's computer file. Those individuals will be dropped from referral to the E & T work program.

**(b)** Any household member living in a non-work program area may volunteer to participate in the E & T work program. The nearest project area administering a work program through ISD will accept the participant.

**E. E & T work program and responsibilities:** The income support division (ISD) administers the work program for applicants for and recipients of food stamp benefits who are required to comply with E & T work requirements. The purpose of the work program is to assist household members participating in the FSP to gain skills, training, work, or work experience that will increase an individual's ability to obtain and/or keep employment.

**(1) Work registrant responsibilities:** Each household member who must be registered for work is required to:

**(a)** register at the time of initial application and every 12 months thereafter;

**(b)** participate in the E & T work program to the extent required by ISD;

**(c)** respond to any request from ISD or its designee for sufficient information to determine employment status or availability for work;

**(d)** report to an employer if referred by ISD or its designee;

**(e)** accept an offer of employment, at a site or plant not subject to a strike or lockout, at a wage not less than the higher of:

**(i)** the applicable federal or state minimum wage; or

**(ii)** 80% of the wage

that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment.

**(2) HSD responsibilities:** HSD is responsible for:

**(a)** screening each household member to determine work registration status;

**(b)** registering mandatory participants;

**(c)** explaining to each applicant FSP work requirements, rights and responsibilities and consequences for failure or refusal to comply; such information must be provided at application, at recertification, and when a previously exempt or new household member must be registered;

**(d)** acting on any notice of non-compliance.

**(i)** Within 10 days of receiving notification that a mandatory work participant is in noncompliance with a work requirement the caseworker will determine if good cause exists for the individual's failure to comply.

**(ii)** Upon a finding that good cause does not exist, a notice of adverse action will be issued, advising the household of the individual's disqualification.

**(iii)** The reduced benefit amount resulting from the disqualification will be reported to the E & T work program.

**(e)** disqualifying non-compliant individuals, and reinstating individuals whose penalty expires, or who are subsequently determined to meet an exemption in Paragraph 2 of Subsection D of 8.139.410.12 NMAC.

**(3) Reporting changes to the E & T work program:** The following changes will be reported to the E & T work program:

**(a)** work participants who become exempt from work registration;

**(b)** work participants who are no longer certified for participation;

**(c)** work participants who move from the project area; and

**(d)** voluntary work participants who are deregistered.

**(e)** In most cases, the changes listed above are reported by entering the appropriate information into the household's computer file. In some cases, a manual form is used to report new information to the work program.

**(4) Work program responsibilities:**

**(a) Scheduling and conducting assessment sessions:** The work program will inform each registrant or participant of:

**(i)** E & T work program

requirements, including rights and responsibilities;

**(ii)** services, benefits, and consequences of failure to comply.

**(b) Placing a participant in a work activity:** A participant may be placed in any work activity deemed appropriate by the work program. The work program has the discretion to exempt a work participant from participation based on the guidelines in the state plan for the work program.

**(c)** authorizing reimbursements up to the regulatory monthly limit for reasonable and necessary costs directly related to work program participation;

**(d)** reporting voluntary work participants who wish to de-register;

**(e)** reporting within 10 days of the date a determination is made that an individual has failed or refused to comply with E & T work requirements.

**F. Voluntary quit/reducing work hours:** When a household reports a loss of income or reduction in work hours, a determination must be made whether any member has voluntarily quit a job or reduced work hours without good cause.

**(1) Period for establishing voluntary quit or a reduction in work hours:** A determination of voluntary quit or reduction in work hours shall be made within the 60 day period prior to the household's application date, or any time after filing an application, or any time during the household's certification period.

**(2) Verification requirements:** Verification of the circumstances surrounding the quit or reduction in work hours is required. Verification is mandatory for all individuals participating in the food stamp program. Benefits may not be conditionally granted pending verification of voluntary quit or reduction in work hours, except when verification cannot be obtained prior to the expedited service time limit.

**(3) Providing verification:** The primary responsibility for providing verification of the circumstances surrounding a quit or reduction in work hours rests with the household.

**(a)** Acceptable sources of verification include, but are not limited to: the employer at the time of quit, employee associations, union representatives, grievance committees or organizations.

**(b)** If documentary evidence cannot be obtained, a collateral contact may be used. The ISS will obtain verification from acceptable collateral contacts provided by the household.

**(c)** If the household and ISS are unable to obtain requested verification because the reason for the quit or reduction in work hours resulted from circumstances that cannot be verified for good cause, the ISS will use the best source of information

available. The household will not be denied access to the FSP.

(d) Circumstances which cannot be verified for good cause may include a refusal by an employer to provide information, discriminatory practices or unreasonable demands by an employer, or an inability to locate the employer.

(4) **Applicant households:** In the case of an applicant household, if any household member subject to food stamp E & T work requirements voluntarily quit a job or reduced work effort, that individual shall be disqualified according to Paragraph 1 of Subsection H of this Section. The disqualification is effective upon a determination of eligibility for the remaining household members.

(5) **Participating households:** In the case of a participating household, if a household member is determined to have voluntarily quit a job or reduced work effort without good cause, that individual shall be disqualified according to Paragraph 1 of Subsection H of this Section. The disqualification is effective the first month following the expiration of the notice of adverse action time limit.

**G. Suitability and good cause:** The ISS must make a determination whether there was good cause for the voluntary quit or reduction in work hours. Individuals determined to have good cause will be registered for work and must comply with E & T work requirements, unless an exemption in Paragraph 2 of Subsection D of 8.139.410.12 NMAC is met. For purposes of determining suitability of employment and good cause for noncompliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the following considerations may be evaluated.

(1) **Unsuitable employment:** In addition to any suitability requirements established under the E & T work program, employment is not considered suitable if:

(a) the wage offered is less than the higher of:

(i) the applicable federal or state minimum wage; or

(ii) 80% of the federal minimum wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 been applicable to the offer of employment.

(b) the employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in (a);

(c) the household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization;

(d) the work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act [29 U.S.C. 178] commonly known as the Taft-Hartley Act, or unless an injunction has been issued under Section 10 of the Railway Labor Act [45 U.S.C. 160];

(e) the degree of risk to health and safety is unreasonable;

(f) the member is physically or mentally unfit to perform the job duties, as documented by medical evidence or by reliable information from other sources;

(g) the employment offered within the first thirty (30) days is not in the member's major field of experience;

(h) the distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting; employment is not considered suitable if daily commuting exceeds two (2) hours per day, not including transporting a child to and from a child care facility; nor is employment considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site;

(i) the working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs; for example, a sabbatarian may refuse to work on the Sabbath.

(2) **Good cause for noncompliance with E & T work requirements:** The work program will report registrants or participants who fail or refuse to comply with E & T work requirements. The HSD has the primary responsibility to determine whether good cause exists for a failure or refusal to comply.

(a) Good cause is determined by considering the facts and circumstances involved, including information submitted by the household member and employer.

(b) Good cause includes circumstances beyond an individual's control, such as, but not limited to:

(i) registrant or participant household member's illness;

(ii) illness of another household member requiring the presence of the registered or participating member;

(iii) household emergency;

(iv) problems caused by registrant's or participant's inability to speak or read English;

(v) unavailability of transportation; or

(vi) lack of adequate child care for children who have reached age six but are under age 12.

(3) **Good cause for voluntary quit/reducing work hours:** Good cause includes the following and must be evaluated on a case by case basis:

(a) circumstances beyond the individual's control, such as those that prevent compliance with E & T work requirements as described in Paragraph 2 of Subsection G of 8.139.410.12 NMAC;

(b) resigning from a job that does not meet the criteria used to establish suitable employment in Paragraph 1 of Subsection G of 8.139.410.12 NMAC;

(c) discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;

(d) work demands or conditions that make continued employment unreasonable, such as working without being paid on schedule;

(e) enrollment of an individual at least half-time in a recognized school, training program, or institution of higher education which requires the individual to leave employment, or which requires the household to move to another county or political subdivision;

(f) resignations by individuals under age sixty (60) which are recognized by the employer as retirement;

(g) acceptance of a bona fide offer of employment of more than twenty (20) hours per week in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours, which because of circumstances beyond the control of the individual, subsequently either does not materialize or results in employment of less than twenty (20) hours per week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours;

(h) leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm workers or construction workers; even though work at the new site has not actually begun, quitting previous employment is considered to be for good cause if it is part of the pattern of that type of employment.

**H. Disqualification for noncompliance:** No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the food stamp program if the individual fails or refuses, without good cause, to comply with work requirements in Subsection C of 8.139.410.12 NMAC.

(1) **Individual disqualification:** Any individual who is required to comply with E & T work requirements, and fails or refuses to comply with the work requirements, or who voluntarily quits a job, or reduces work hours without good cause will

be disqualified as follows:

(a) **first occurrence:** until compliance or for three (3) months, whichever is later;

(b) **second occurrence:** until compliance or for six (6) months, whichever is later;

(c) **third occurrence:** until compliance or for one (1) year, whichever is later.

**(2) Treatment of income and resources:**

(a) All the income and resources of an individual disqualified for noncompliance with work requirements will be counted to determine the household's income and resource maximum levels, and benefit amount (see Subsection C of 8.139.520.10 NMAC).

(b) In the case of an applicant household, where there has been a determination of voluntary quit or reduction in work hours without good cause within 60 days prior to the application date, the earned income lost as a result of the quit or reduction in hours shall not be counted.

(c) When a determination is made that a household member has voluntarily quit or reduced work hours without good cause after an application is filed, but before approval, the earned income of the disqualified individual that would have been countable at application shall be calculated and used to determine the eligibility and benefit amount of the remaining household members.

(d) In the case of a participating household, where there has been a determination of voluntary quit or reduction in work hours without good cause, the department shall ensure that, as a result of the individual disqualification:

(i) the household's food stamp benefits do not increase for the length of the disqualification period;

(ii) the household's food stamp benefit amount for the length of the disqualification period is calculated by using the disqualified individual's income prior to the quit or reduction; and

(iii) the household will be issued the lesser of the food stamp benefit amount the household is eligible for prospectively or the food stamp benefit amount the household was receiving prior to the individual's disqualification.

(e) Any reported change that does not relate to the individual disqualification shall be processed after the appropriate determination in (a), (b) or (c) or (d) above is made. Food stamp benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC.

**(3) Determining the disqualification period:**

(a) **At application:** An individual who is a member in an applicant household, and who is in a prior disqualification period, will be denied food stamp benefits beginning with the month of application.

(b) **During participation:** An individual who has failed or refused to comply with work requirements while participating in the FSP will be ineligible to participate beginning with the month following the month in which the notice of adverse action time limit expires.

(c) **[Quarterly] Semiannual reporting households:** An individual who has failed or refused to comply with work requirements during a [~~quarterly~~ semiannual] reporting period, shall be ineligible to participate beginning with the month following the month the notice of adverse action time limit expires. If the adverse action time limit will expire in the month after the notice would have been sent, the caseworker must wait until the first day of the following month to send the notice of adverse action.

(4) **Disqualification in the last month of certification:** For all participating households, including households subject to [~~quarterly~~ semiannual] reporting:

(a) If a notice of noncompliance is received in the last month of the certification period, an adverse action notice will be sent to the household. The disqualification period begins the first month following the month the adverse action time limit expires, whether or not the household reapplies for food stamp benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(b) If the adverse action time limit expires in the last month of the household's certification period, the disqualification penalty will begin the following month, whether or not the household reapplies for food stamp benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(5) **Lifting the disqualification:** An individual who has been disqualified may resume participation during the disqualification period by becoming exempt from E & T work requirements listed in Paragraph 2 of Subsection D of 8.139.410.12 NMAC, if otherwise eligible.

**I. Head of household provisions:**

(1) **Designation:** The household may designate any adult parent of a child in the household as the head of household, if all adult household members making appli-

cation agree to the selection. A household may designate the head of household each time the household is certified for participation in the FSP but may not change the designation during a certification period, unless there is a change in household composition.

(2) **Compliance with E & T work requirements:** For purposes of determining compliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the head of household will be considered as an individual household member. The head of household will be disqualified in accordance with the disqualification penalties in Paragraph 1 of Subsection H of 8.139.410.12 NMAC.

(a) If the head of household leaves the household during a period of ineligibility, the disqualification follows the individual. The remaining household members, if otherwise eligible, continue to be eligible to participate in the FSP.

(b) If the head of household becomes the head of another household, the individual disqualification continues to apply. The other household members continue to be eligible to participate in the FSP.

**J. Work requirement for able bodied adults without children (ABAWDs):**

An applicant or recipient who is a mandatory work participant in the food stamp E & T program shall be considered for compliance with the 20-hour-a-week work requirement for ABAWDs. Unless determined exempt, any individual who is a mandatory ABAWD shall be required to comply with the 20-hour-a-week work requirement to maintain eligibility for food stamp benefits.

(1) **Exemptions:** Certain individuals are exempt from the ABAWD 20-hour-a-week work requirement:

(a) an individual determined to be exempt from work requirements of the Food Stamp E & T program set forth at Subsection D of this section;

(b) an individual under age 18 or age 50 or older;

(c) an individual medically certified as physically or mentally unfit for employment;

(d) a pregnant woman;

(e) an individual residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits;

(f) a natural, adoptive or step-parent residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits.

(2) **Medical reports:** To determine an exemption from the 20-hour-a-week work requirement on the basis of pregnancy or physical or mental unfitness, the individual must provide a written report



by a medical practitioner such as a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist or social worker.

(a) In the case of a pregnancy, the report must verify the pregnancy and identify the expected date of delivery.

(b) A claim of physical or mental unfitness must be substantiated by a written report identifying the physical or mental condition and certifying that the person is unfit for employment.

**(3) Time limited eligibility for ABAWDs:** An ABAWD who is determined mandatory to comply with the 20-hour-a-week work requirement shall not be eligible to participate in the food stamp program as a member of any household if the individual received food stamp benefits but failed to comply with the 20-hour-a-week work requirement for three countable months in a 36-month period.

(a) **36 month period:** The 36 month period is a fixed calendar month period beginning on December 1, 2002. The period ends on November 30, 2005.

(b) **Countable months in the 36-month time limit:** Within the fixed 36-month period, an ABAWD shall have a month counted toward the three-month time limit if the 20-hour-a-week work requirement is not met and the household received a full month's benefits.

(i) In no event shall a month be counted toward the three-month time limit if the individual has not attained the age of 18.

(ii) A month that an ABAWD has used without fulfilling the work requirement in another state shall be counted toward the three-month time limit as long as the other state verifies the month has been used as a non-work month.

**(4) Fulfilling the 20-hour-a-week work requirement:**

(a) **Working:** For purposes of determining the activities that count towards the 20-hour-a-week work requirement, the time spent working in exchange for money, or working in exchange for goods or services, or unpaid work, or any combination of these activities shall be considered as employment and credited toward the 20-hour-a-week work requirement.

(b) **Work activities:** Allowable work activities that count towards the 20-hour-a-week work requirement include:

(i) employment for at least 20 hours a week averaged monthly or 80 hours a month, but not unreported employment; in the case of self-employment income, gross monthly earnings, as determined under Paragraph 2 of Subsection E of 8.139.520.10 NMAC, are divided by the minimum wage to determine

the number of hours that are countable in meeting the work requirement;

(ii) participation in and compliance with the requirements of a work program at least 20 hours a week;

(iii) any combination of employment and participation in a work program for at least 20 hours a week;

(iv) job search or job search training activities that are incorporated into the department's a work program or another state or local program that meets food stamp E & T requirements as long as the job search or job search training activities equal less than half the work requirement;

(v) participation in and compliance with a workfare program.

(c) **Work program:** Allowable activities in a work program include those performed under:

(i) the Workforce Investment Act (Public Law 105-220);

(ii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(iii) the department's food stamp E&T program;

(iv) any other state or local program which is recognized by the department as meeting food stamp E&T program requirements.

**(5) Reporting and verifying work participation:**

(a) It is the responsibility of the individual subject to the work requirement to report:

(i) whether or not that individual has worked or participated in a work program;

(ii) the number of hours spent in work or work program activities;

(iii) how the work requirement was fulfilled; and

(iv) when the individual's work hours fall below 20 hours a week, averaged monthly, or 80 hours a month.

(b) Verification of the time spent working is mandatory in order to receive credit toward the work requirement. It is the responsibility of the individual subject to the work requirement to provide verification of participation in work activities by the fifth calendar day of each month following the month of participation in work activities.

(6) **Good cause for failure to meet the work requirement:** An ABAWD may establish good cause for failure to meet the 20-hour-a-week work requirement if the absence from work is temporary and the individual retains employment, or if participation in work activities resulted from a temporary absence due to circumstances beyond the individual's control. Good

cause reasons include, but are not limited to, illness, illness of another household member requiring the presence of the ABAWD, a household emergency, or the unavailability of transportation. Good cause is established on an individual basis.

(7) **Regaining eligibility:** An individual who becomes ineligible due to failure to meet the work requirement for three months can regain eligibility by working or participating in an approved work program for at least 80 hours during any 30 consecutive day period following the date of ineligibility.

(a) An individual who regains eligibility is eligible on an ongoing basis provided he or she continues to meet the 20-hour-a-week work requirement.

(b) There is no limit to the number of times an individual may regain eligibility during the 36-month period.

(8) **Failure to meet the work requirement after regaining eligibility:** An individual who has regained eligibility and who subsequently fails to meet the 20-hour-a-week work requirement in any month left in the 36-month period shall be eligible to receive food stamp benefits for a three consecutive month period.

(a) The three-month period begins with the month the work requirement was not met, provided the individual is otherwise eligible.

(b) Upon expiration of the three months, the individual becomes ineligible for the remainder of the fixed 36-month period.

(c) The individual may re-establish eligibility by either regaining eligibility or because a determination is made that the individual becomes exempt from the 20-hour-a-week work requirement.

(9) **Costs:** Except for costs assumed by HSD pursuant to an approved food stamp E&T supportive services plan, HSD has no financial responsibility for any costs or liabilities incurred by persons electing to participate in a work program in order to meet the food stamp work requirement.

[02/01/95, 07/01/98; 8.139.410.12 NMAC - Rn, 8 NMAC 3.FSP.415, 05/15/2001; A, 10/15/2003; A, 01/01/2004]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.500 NMAC, Sections 10, 11, and 12. This amendment repeals quarterly reporting and implements semiannual reporting requirements for certain households that receive food stamp benefits. This amendment also clarifies regulations for allowing a mandatory utility standard rather

than the Standard Utility Allowance.

### 8.139.500.10 DETERMINING INCOME

#### A. Anticipating income:

In determining a household's eligibility and food stamp benefit amount the caseworker shall use income already received by the household during the certification period and any income the household and the caseworker are reasonably certain shall be received during the remainder of the certification period.

(1) If the amount of income or date of receipt is uncertain, that portion of the household's income that is uncertain shall not be counted.

(2) If the exact amount of the income is not known, that portion of the income which can be anticipated with reasonable certainty shall be considered income.

(3) In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, a household may choose to average its income.

#### B. Income received during the last four (4) weeks shall be used as an indicator of the income that is and shall be available to the household during the certification period.

(1) Past income is not used as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated during the certification period.

(2) If income fluctuates to the extent that a single four-week period does not provide an accurate indication of anticipated income, a longer period of past time can be used if it gives a more accurate indication of anticipated fluctuations in income.

(3) Income already received is not used and verification is obtained from the income source, if the household and the caseworker decide that income already received by the household is not indicative of income expected to be received in future months.

#### C. ~~Quarterly Reporting:~~

~~A household subject to Quarterly Reporting shall be subject to income methodology as specified in Subsection F of 8.139.120.9 NMAC.~~ **Semiannual reporting:** A household filing a semiannual report is subject to the income methodology specified at Subsection H of 8.139.120.9 NMAC.

#### D. Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(1) Past income is not used as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated during the certification period.

#### E. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount by multiplying weekly amounts by

4.3 and biweekly amounts by 2.15. Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received. Instead, the amount of the extra paycheck is averaged over the certification period.

#### F. Held wages:

(1) Wages withheld at the request of an employee shall be considered income to a household in the month the wages would otherwise have been paid by the employer.

(2) Wages withheld by the employer as a general practice, even in violation of the law, shall not be counted as income to a household, unless the household anticipates that it will ask for and receive an advance.

(3) If a household anticipates asking for and receiving income from wages that were previously withheld by the employer as a general practice, the income shall be counted to determine eligibility.

#### G. Earned income:

Earned income is anticipated as follows:

(1) Income received in the four weeks before the date of interview shall be used to anticipate income for the month of application. The same income is used for the remaining months of the certification period, provided that the applicant and the caseworker are reasonably certain the income amounts are indicative of future income.

(2) If the applicant and the caseworker determine that the income is not indicative of income anticipated to be received during the certification period, a longer period of past time shall be used if it will provide a more accurate indicator of anticipated income.

#### H. Unearned income:

(1) In order to anticipate unearned income, income from the four weeks prior to the date of interview shall be used, provided the income is expected to continue.

(2) Households receiving state or federal assistance payments, such as Title IV-A, GA, SSI or social security payments on a recurring monthly basis are not considered to have varied monthly income from these sources simply because mailing cycles may cause two payments to be received in one month.

#### I. Income received more frequently than weekly:

The amount of monthly gross income paid more frequently than weekly (i.e., daily) is determined by adding all the income received during the past four weeks. The gross income amount is used to anticipate income in the application month and the remainder of the certification period. Conversion factors shall not be applied to this income.

**J. Income received less frequently than monthly:** The amount of monthly gross income paid less frequently than monthly is determined by dividing the total income by the number of months it is intended to cover. The caseworker shall carefully explain to the household how the monthly income was computed and what changes might result in a reportable change. Documentation shall be filed in the case record to establish clearly how the anticipated income was computed.

#### K. Conversion factors:

Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is multiplied by 4.3;

(2) income received on a biweekly basis is multiplied by 2.15;

(3) using the conversion factors accounts for those months in which an extra paycheck is received;

(4) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.40 or lower are rounded down.

#### L. Known changes in income for future months at application:

(1) At application or recertification, it shall be determined if any factors affecting income will change in future months. Such factors include a new income source, termination of income, or increases or decreases in income.

(2) Income is considered only when the amount of the income and the date it will be received are reasonably certain.

(3) In the event that a change is known for future months, benefits are computed by taking into account the change in income.

#### M. Averaging income over the certification period:

(1) All households may choose to have their income averaged. Income is usually not averaged for destitute households because averaging would result in assigning to the month of application income from future periods which is not available for its current food needs.

(2) To average income, the caseworker uses a household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.

#### (3) Contract income:

Households which, by contract, derive their annual income in a period of less than one year shall have that income averaged over a twelve (12)-month period, provided that the

income is not received on an hourly or piecework basis.

(a) Contract income includes income for school employees, farmers, self-employed households, and individuals who receive annual payments from the sale of real estate.

(b) These procedures do not include migrant or seasonal farm worker households.

(4) **Educational monies:** Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it is provided. All months which the income is intended to cover shall be used to average income, even if the income is received during the certification period. If the period has elapsed completely, the educational monies shall not be considered income.

N. **Using exact income:** Exact income, rather than averaged income, shall be used if:

(1) the household has chosen not to average income;

(2) income is from a source terminated in the application month;

(3) employment has just begun in the application month and the income represents only a partial month;

(4) in the month of application, the household qualifies for expedited service or is considered a destitute, migrant or seasonal farm worker household; or

(5) income is received more frequently than weekly, (i.e., daily).

[02/01/95, 11/01/95, 07/01/97, 06/01/99; 8.139.500.10 NMAC - Rn, 8 NMAC 3.FSP.502.7, 05/15/2001; A, 02/14/2002; A, 01/01/2004]

**8.139.500.11 DETERMINING DEDUCTIBLE EXPENSES:** Household expenses which can be deducted from income include only certain costs of dependent care, child support, medical and shelter expenses.

A. **Expenses not allowed as deductions:**

(1) **Vendor payments and reimbursements:** An expense covered by an excluded reimbursement or vendor payment is not deductible. Vendor payments are those paid directly to a household's creditors by a non-household member, while reimbursements are paid to a household after it has paid creditors.

(2) **Reimbursable medical expenses:** That portion of an allowable medical expense which is reimbursable will not be included as a household's medical expense when calculating the medical expense deduction.

(3) **Service provided by house-**

**hold member:** Expenses will be deductible only for a service provided by someone outside a participating household, and for which the household makes a money payment. Only money received from an outside source is considered income to a household; money paid to a provider outside the household is counted as a deductible expense.

(4) **Child care expenses:** Child care expenses which are reimbursed or paid for by the Jobs Opportunities and Basic Skills Training Program (JOBS) under Title IV-F of the Social Security Act [42 USC 681] or the transitional child care (TCC) program will not be deductible when calculating the dependent care deduction allowed for a household.

(5) **Child support expenses:** A child support deduction will not be allowed if the household does not report or verify its monthly child support payment or a change in its legal obligation.

B. **Billed expenses:**

(1) **Allowing a deduction:** A deduction is allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay it.

(2) **Arrears:** Amounts carried forward from past billing periods (arrears) are not deductible, even if included in the most recent billing and actually paid by the household, unless these expenses are billed less often than monthly and are averaged. A particular expense may be deducted only once. Rent, mortgage payments or property taxes that are in arrears are not allowed, even if they were not previously allowed in any certification period.

(3) **Expense not allowed:** If a household receives a bill during the certification period but does not report it until it is past due, the expense may not be allowed as a deduction. Similarly, late charges assessed to a household on a past due bill are not allowed as a deductible expense.

(4) **Billed medical expenses:** If a household claims a deduction for billed medical expenses, but does not know or cannot verify the portion of billed expenses that will be reimbursed, the expense is allowed after the reimbursement is received or can otherwise be verified, rather than in the month the bill is received. Only the unreimbursed amount of the bill is deductible. A deduction will be allowed when the household verifies that a billed medical expense will not be paid directly to the provider by a third party, or will not be reimbursed to the household by an insurance company or government program.

(5) **Child support deduction:**

(a) Child support is not an allowable deduction when billed. Verification of payment must be received prior to

allowance of the deduction.

(b) The child support deduction will include amounts paid toward arrearages, provided that the household has at least a 3-month record of payments.

C. **Anticipating expenses:** A household's expenses will be calculated based on the expenses the household expects to be billed during the certification period.

(1) Anticipation of expenses is based on the most recent month's bills, unless the household is reasonably certain a change will occur.

(2) If actual costs for a household's [~~heating or cooling~~] heating/cooling or other utility expenses are anticipated to be less than the [~~state's SUA, the SUA will be used~~] appropriate mandatory utility standard, the appropriate mandatory utility standard shall be allowed.

~~(3) If more than one household shares shelter and utility expenses and a household's share of the utility billing is less than its prorated share of the SUA, the household is given its prorated share of the SUA.]~~

~~(4)~~ (3) Income conversion procedures will apply to anticipated expenses billed on a weekly or biweekly basis.

~~(5)~~ (4) Child support will be anticipated based on actual payments during past months and reasonably certain changes expected in the future.

D. **Averaging expenses:** A household may choose to have fluctuating expenses averaged.

E. **One-time expenses:** A household may choose to have a one-time only expense averaged over the entire certification period, or allowed in the month the expense is billed or becomes due.

(1) If a household chooses the one-time expense deduction, the [HSS] case-worker will document the expense in the case file. Such expenses include annual property taxes and insurance.

(2) A one-time expense may be averaged over the period the billing is intended to cover.

(3) 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.

(4) A household reporting a one-time only medical expense during its certification period may choose to have a one-time expense deduction or to have the expense averaged over the remaining months of the certification period.

(a) If a household incurs a one-time only medical expense and makes arrangements with the provider to pay in monthly installments (beyond the current certification period), the expense may be allowed each month as arranged.

(b) A household reporting a one-time only medical expense during the certification period may choose to have a one-time deduction or to have the expense averaged over the remaining months of the certification period. Averaging would begin the month the change becomes effective.

(c) If a household is billed for and reports an expense during the last month of the certification period, the deduction may not be allowed unless it will be paid in installments during the following certification period. The deduction will be allowed during the appropriate number of months in the following certification period.

**F. Expenses billed less often than monthly:** Households may choose to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. Averaging may be used even if the bill is received before the certification period. Averaging is governed by the scheduling of the bill or the period the expense is intended to cover.

**G. Fluctuating medical expenses:** Fluctuating medical expenses will be allowed as deductions if regularly recurring, reasonably anticipated, and verified. Medical expenses will not be calculated by averaging past months' medical expenses. Past expenses are used only as an indicator of what can reasonably be anticipated.

**H. Dependent care:** Dependent care expenses paid on a weekly or biweekly basis will be averaged if a household has chosen to average income. Conversion procedures will be used if a household is billed on a weekly or biweekly basis.

[02/01/95, 10/01/95; 8.139.500.11 NMAC - Rn, 8 NMAC 3.FSP.502.8, 05/15/2001; A, 01/01/2004]

### 8.139.500.12 ESTABLISHING CERTIFICATION PERIODS

**A.** The caseworker shall establish a definite period of time within which a household is eligible to receive benefits.

**B.** Entitlement to food stamp benefits ends at the expiration of the household's certification period. Continued eligibility is determined only when an application has been filed, an interview held, and all verification provided.

**C.** Under no circumstances shall benefits be continued beyond the end of a certification period without a redetermination of eligibility.

**D.** A household shall be provided with an expiration notice before or at the beginning of the last month of a certi-

fication period.

**E.** If a household is determined eligible for the initial month but ineligible the following month, it shall be certified for one month only. Conversely, a household may be ineligible for the month of application but eligible for the following month(s). If the household is denied for the month of application, it does not need to file a new application for the following month.

**F. Conformity with calendar month:** Certification periods shall conform to calendar months. At the initial application, the first month in the certification period is the month of application, even if the household's eligibility is not determined until a later month.

**G. Length of certification period:** Households shall be assigned the longest certification period possible based on the stability of the household's circumstances. A certification period cannot exceed 12 months, except for households in which all adult members in the household are elderly or disabled. At least one contact with each certified household shall be made every 12 months.

**(1) Three months or less:** A certification period of three months or less may be assigned if there is a substantial likelihood of frequent and/or significant changes in household circumstances, including but not limited to, ~~homelessness,~~ income and household status. ~~[A household with earned income is limited to a three-month certification period.]~~

**(2) More than three months:** A certification period of more than three months may be assigned if it is determined that household circumstances will remain stable throughout the certification period. A stable household is one which does not anticipate major changes in income, deductions, or household composition.

**(3) Cash assistance households:** A household in which all members are contained in a single cash assistance grant shall have a food stamp certification period which coincides with the cash assistance certification period.

**(4) Up to twelve months:**  
**(a)** A household whose primary source of income is from self-employment (including self-employed farmers), or from regular farm employment with the same employer, ~~[may be certified for up to twelve months, provided the income can reasonably be anticipated and household circumstances are not likely to change]~~ shall be certified for twelve months.

**(b) [Annual certification periods]** ~~A twelve-month certification period shall be assigned to a household which is paid an annual salary on a scheduled monthly basis, if the salary does not change as the amount of work changes.]~~

**(c) [Quarterly Reporting Households:** ~~Households subject to Quarterly Reporting requirements shall be certified as set forth in 8.139.120.9 NMAC.]~~ **Semiannual reporting households:** A household assigned to semiannual reporting shall be assigned a twelve-month certification period.

**(5) Aliens:** To the degree possible, aliens shall be assigned a certification which shall at some point coincide with the expiration date of the alien's legal alien status.

**(6) Elderly/disabled households:** A household in which all adult household members are elderly or disabled may be certified for up to 24 months. At least one contact with the household shall be made every 12 months.

**(7) To the degree possible, households in which all members are homeless shall be assigned a three-month certification period, including but not limited to, homeless households that have no income and live on the street or in a shelter.**

**H. Shortening the certification period:**

**(1)** The caseworker may not end a household's certification period earlier than its assigned termination date, unless the caseworker receives information that the household has become ineligible, or the household has not taken action to clarify or provide verification of a change in household circumstances for which the caseworker has requested verification.

**(2)** Loss of cash assistance or a change in employment status is not sufficient to meet the criteria necessary for shortening a certification period.

**I. Lengthening the certification period:** The caseworker may lengthen a household's current certification period once it is established, as long as the total months of the certification period do not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the caseworker extends the household's certification period, the caseworker shall issue written notice advising the household of the new certification end date.

[02/01/95, 01/01/97, 07/01/98; 8.139.500.12 NMAC - Rn, 8 NMAC 3.FSP.502.9, 05/15/2001; A, 02/14/2002; A, 01/01/2004]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.520 NMAC, Section 10. This amendment repeals any reference to quarterly reporting and implements a semiannual report-

**ing requirement for certain households that receive food stamp benefits.****8.139.520.10 C O U N T I N G INCOME****A. Income averaging:****(1) Optional income averaging:**

Income received by a household may be averaged at the household's option ( See 8.139.500.10 NMAC) except as specified below.

**(2) Mandatory income averaging:** Averaging is mandatory for income received under the following circumstances:

**(a)** contract or self-employment income;

**(b)** educational monies.

**B. Rounding off:**

Calculations shall be rounded to the nearest dollar. Figures between one cent and forty-nine cents (1¢ - 49¢) are rounded down; figures between fifty cents and ninety-nine cents (50¢ - 99¢) are rounded up. When adding gross amounts received weekly, biweekly or semi-monthly to arrive at the monthly income, cents are retained until the total monthly amount is determined; the total monthly amount is rounded as the final step. Cents resulting from the computation of the twenty percent (20%) earned income deduction are rounded before being subtracted from earned income. Cents are retained in the computation of shelter and medical expenses until the final step.

**C. Ineligible or disqualified household members:** An ineligible or disqualified household member shall not be included when:

**(1)** determining the maximum food stamp benefit amount for the household's size;

**(2)** comparing the household's monthly income with the income eligibility standards; or

**(3)** comparing the household's resources with the resource eligibility limits.

**(4) Intentional program violation (IPV) or work disqualified:**

**(a)** The income and resources of individuals disqualified for IPV or noncompliance with E&T work requirements shall be counted in their entirety.

**(b)** A household's allowable deductions for earned income, medical expenses, dependent care expenses, excess shelter expenses, and the standard deduction continue to apply to the remaining household members.

**(c)** HSD shall make sure that a household's food stamp benefit amount is not increased as a result of the disqualification of one or more members.

**(5) Ineligible alien or SSN disqualified:**

**(a) Resources:** Resources of ineligible aliens, or individuals disqualified for failure or refusal to apply for or provide a social security number, shall be counted in their entirety.

**(b) Income and deductions of ineligible aliens:**

**(i)** Income belonging to the ineligible alien shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the ineligible alien's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

**(ii)** The 20% earned income deduction is applied to the countable income attributed to the remaining eligible household members.

**(iii)** The allowable expense(s) either billed to or paid by the ineligible alien shall be allowed in its entirety as a household expense.

**(c) Income and deductions for ABAWD or SSN disqualified individuals:**

**(i)** Income belonging to an individual disqualified because of ABAWD status or failure or refusal to provide a social security number shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the disqualified member's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

**(ii)** The 20% earned income deduction is applied to the countable income attributed to the remaining household members.

**(iii)** The portion an allowable expense either paid by or billed to a disqualified individual(s) is divided evenly among all household members, including the disqualified individual(s). All but the disqualified individual's share is counted as a deductible expense for the remaining household members.

**(6) Reduction/termination during certification period:** When an individual is excluded or disqualified during the certification period, the caseworker shall determine the eligibility of the remaining household members based on information already in the case record.

**(7) Excluded for IPV disqualification:** If a household's benefits are reduced or terminated during the certification period because one of its members was disqualified for an IPV, the caseworker shall notify the remaining household members of

changes in eligibility and food stamp benefit amount at the same time the excluded member is notified of the disqualification. The household is not entitled to an adverse action notice but may request a fair hearing to contest the reduction or termination of benefits, unless it has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

**(8) Excluded for other causes:**

If a household's benefits are reduced or terminated during the certification period because one or more of its members is an ineligible alien, is disqualified for failure to comply with E&T work requirements, disqualified for failing or refusing to apply for or provide a social security number, the caseworker shall issue an adverse action notice informing the household of the individual's ineligibility, the reason for the ineligibility, the eligibility and benefit amount of the remaining member(s), and the actions the household must take to end the disqualification.

**D. Nonhousehold members:**

**(1) Income and resources:** The income and resources of nonhousehold members, such as certain students, roomers, and boarders, are not considered available. Cash payments from a nonhousehold member to the household shall be counted as income (Subsection E of 8.139.520.8 NMAC). Vendor payments (Subsection D of 8.139.520.9 NMAC) shall be excluded as income.

**(2) Deductible expenses:** If a household shares deductible expenses with a nonhousehold member, only the amount actually paid or contributed by the household is deductible as an expense. If the payments or contributions cannot be differentiated, the expenses shall be divided evenly among individuals actually paying or contributing to the expense; only the household's pro rata share is deducted.

**(3) Combined income of household/nonhousehold members:** When the earned income of one or more household members and the earned income of a nonhousehold member are combined as one wage, the income for the household shall be determined as follows.

**(a)** If the household's share can be identified, it is counted as earned income;

**(b)** If the household's share cannot be identified, the caseworker shall divide the earned income among all those whom it was intended to cover and count a prorated share to the household.

**E. Self-employed household:** The following guidelines shall be used to determine eligibility and food stamp benefit amount for self-employed house-

holds, including those households that own or operate commercial boarding houses. ~~[Households with self-employment income only, shall not be subject to Quarterly Reporting (8.139.120.9 NMAC).]~~

**(1) Averaging self-employment income:**

**(a) Annualizing:**

(i) Households which by contract or self-employment derive their annual income in a period of time shorter than one year shall have income averaged over a 12-month period, provided that the income from the contract is not received on an hourly or piecework basis.

~~[(ii) Households that have self-employment income only and annualize their self-employment income shall not be subject to Quarterly Reporting requirements.]~~

~~[(iii) (i)]~~ (ii) Annualizing shall not apply to seasonal or migrant farm workers.

~~[(iv) (iii)]~~ (iii) Self-employment income representing a household's annual income shall be averaged over a 12-month period, even if the income is received within only a short period of time.

~~[(v) (iv)]~~ (iv) The self-employment income shall be annualized even if the household receives income from other sources in addition to self-employment. ~~[Only the income received from the other sources shall be subject to Quarterly Reporting requirements as outlined in 8.139.120.9 NMAC, if the self-employment income is annualized.]~~

~~[(vi) (v)]~~ (v) Self-employed households include, but are not limited to, school employees, sharecroppers, and farmers. Tenured teachers who may not actually have a signed contract shall have their income considered on this basis.

~~[(vii) (vi)]~~ (vi) For self-employed households that receive their annual income in a short period of time, an initial certification period is assigned to bring the household into the annual cycle.

~~[(viii) (vii)]~~ (vii) Households which receive their annual income from self-employment and have no other source of income may be certified for up to twelve (12) months.

**(b) Anticipated income:**

(i) If the averaged annualized amount or self-employment income received on a monthly basis does not accurately reflect a household's actual circumstances because it has experienced a substantial increase or decrease in business, self-employment income shall be calculated on anticipated earnings.

(ii) Income shall not be calculated based on previous income (e.g., income tax returns) if a self-employed

household has experienced a substantial increase or decrease in business.

**(c) Projected income:** If a household's self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year. If the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household shall be certified for short periods of time until the business has been in operation long enough to make a longer projection.

**(d) Seasonal income:** Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

**(2) Determining monthly self-employment income:**

(a) For the period of time over which self-employment income is averaged, the caseworker shall add all self-employment income, including capital gains, exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income shall be averaged.

(b) A capital gain is defined as proceeds from the sale of capital goods or equipment. Capital gains are counted in full as income to determine self-employment income.

(c) For households with self-employment income calculated on an anticipated basis, the caseworker shall add any capital gains the household anticipates receiving in the next 12 months, beginning with the date the application is filed. The resulting amount is counted in successive certification periods during the 12 months, except that a new average monthly amount is calculated if the anticipated amount of capital gains changes.

**(3) Determining net self-employment income:**

(a) A household's total self-employment income, minus the allowable costs of producing the income, shall be counted as gross income to the household. The gross self-employment income shall be added to any other earned income.

(b) The total monthly gross earned income, after allowing the 20% earned income deduction, is added to all monthly unearned income to determine income eligibility.

(c) For households anticipating income, the cost of producing income is calculated by anticipating allowable costs of producing the self-employment income.

(d) Expenses exceeding self-

employment income shall not be deducted from other income.

(e) If a self-employment enterprise is a farming or ranching operation, expenses exceeding self-employment income may be offset against any other countable household income, provided that the farming or ranching operation grosses or is anticipated to gross at least \$1,000 annually.

**(4) Allowable costs:** Allowable costs of producing self-employment income include, but are not limited to:

(a) identifiable costs of labor, stock, raw material, seed and fertilizer,

(b) payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods,

(c) interest paid to purchase income-producing property,

(d) insurance premiums, and taxes paid on income-producing property,

(e) transportation costs necessary to produce self-employment income, such as farmers carrying grain to elevators, or trips to obtain needed supplies, are allowable costs of doing business; costs are allowed at \$.25 per mile;

(f) payment of gross receipts taxes.

**(5) Costs not allowed:** In determining net self-employment income, the following shall not be allowed as a cost of doing business:

(a) net losses from previous periods;

(b) federal, state, and local personal income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), since these expenses are accounted for by the 20 percent earned income deduction (Paragraph 3 of Subsection E of 8.139.520.10 NMAC);

(c) charitable contributions and entertainment; and

(d) depreciation.

**F. Boarders:**

(1) Individuals paying a reasonable amount for room and board shall be excluded from a household when determining the household's eligibility and food stamp benefit amount.

(2) Payments from a boarder shall be counted as self-employment income.

(3) Household income eligibility is determined as follows.

(a) Income from a boarder includes all direct payments to the household for room and meals, including contributions for shelter expenses.

(b) Shelter expenses paid by a boarder directly to someone outside the household shall not be counted as income. Such payments are considered vendor pay-

ments, and are not used to determine reasonable compensation (Paragraph 4 of Subsection C of 8.139.400.11 NMAC), or as a shelter expense for the household.

(4) After determining the income received from a boarder, the caseworker shall exclude the portion of the boarder payment which is a cost of doing business. The cost of doing business is equal to either of the following, provided that the amount allowed as a cost of doing business does not exceed the payment the household receives from the boarder for lodging and meals:

(a) the amount of the maximum food stamp allotment for a household size that is equal to the number of boarders (Subsection E of 8.139.500.8 NMAC); or

(b) the actual documented cost of providing room and meals if the actual cost exceeds the appropriate maximum food stamp allotment; if actual costs are used, only separate and identifiable costs of providing room and meals to boarders are excluded.

[02/01/95, 07/01/98; 8.139.520.10 NMAC - Rn, 8 NMAC 3.FSP.524, 05/15/2001; A, 02/14/2002; A, 01/01/2004]

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

This is an amendment to 8.200.420 NMAC, Section 10, which will be effective on January 1, 2004. The Medical Assistance Division amended language to remove school attendance requirements for children under 18 years of age and clarify school attendance requirements for children 18 years of age.

**8.200.420.10 SCHOOL ATTENDANCE:** ~~[For an applicant/recipient eligible for Medicaid based on his/her eligibility for Category 002 Medicaid, school attendance is a factor in the Medicaid eligibility determination.] School attendance is a factor in determining JUL medicaid eligibility for 18 year-old applicants/recipients. School attendance is not a factor in determining JUL medicaid for children under the age of 18 years.~~

[2-1-95, 4-1-98, 6-30-98; 8.200.420.10 NMAC - Rn, 8 NMAC 4.MAD.422, 7-1-01; A, 1-1-04]

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

This is an amendment to 8.200.510 NMAC, Sections 11, 12, and 13, which will be effective on January 1, 2004. The Medical Assistance Division amended subsections

in each section by changing the deduction amounts.

**8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):** The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CRSA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

(P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04]

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):** Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

| <b>DEDUCTION</b>  | <b>AMOUNT</b>              |
|---|----------------------------|
| A. Personal needs allowance for institutionalized spouse                      | \$50                       |
| B. Basic community spouse monthly income allowance standard (CSMIA)           | \$1,515                    |
| (CSMIA standard minus income of community spouse = deduction                  |                            |
| C. * Excess shelter allowance for allowable expenses for community spouse     | [ <del>\$752</del> ] \$804 |
| D. ** Extra maintenance allowance   |                            |
| E. Dependent family member 1/3 X (CSMIA - dependent member's income)          |                            |
| F. Non-covered medical expenses   |                            |
| G. * The allowable shelter expenses of the community spouse must exceed \$455 |                            |

per month

for any deduction to apply.

H. \*\* To be deducted, the extra maintenance allowance for the community spouse must

be ordered by a court of jurisdiction or a state administrative hearing officer.

I. **MAXIMUM TOTAL:** The maximum total of the community spouse monthly income allowance and excess shelter deduction is [~~\$2,267~~] \$2,319.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04]

**8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:** Costs of care are based on the date of application registration.

| <u>DATE</u>  | <u>AVERAGE COST PER MONTH</u> |
|--|-------------------------------|
| A. July 1, 1988 - Dec. 31, 1989  | \$ 1,726 per month            |
| B. Jan. 1, 1990 - Dec. 31, 1991  | \$ 2,004 per month            |
| C. Jan. 1, 1992 - Dec. 31, 1992  | \$ 2,217 per month            |
| D. Effective July 1, 1993, for application register on or after Jan. 1, 1993 | \$ 2,377 per month            |
| E. Jan. 1, 1994 - Dec. 31, 1994  | \$ 2,513 per month            |
| F. Jan. 1, 1995 - Dec. 31, 1995  | \$ 2,592 per month            |
| G. Jan. 1, 1996 - Dec. 31, 1996  | \$ 2,738 per month            |
| H. Jan. 1, 1997 - Dec. 31, 1997  | \$ 2,889 per month            |
| I. Jan. 1, 1998 - Dec 31, 1998   | \$ 3,119 per month            |
| J. Jan. 1, 1999 - Dec. 31, 1999  | \$ 3,429 per month            |
| K. Jan. 1, 2000 - Dec. 31, 2000  | \$ 3,494 per month            |
| L. Jan. 1, 2001 - Dec. 31, 2001  | \$ 3,550 per month            |
| M. Jan. 1, 2002 - Dec. 31, 2002  | \$ 3,643 per month            |
| N. Jan. 1, 2003 - <u>Dec. 31, 2003</u>                                       | \$4,188 per month             |
| <u>O. Jan. 1, 2004 -</u>   | <u>\$3,899 per month</u>      |

Any fraction of a month remaining when this calculation is completed is dropped.

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04]

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

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16 and 20 which will be effective on January 1, 2004. The Medical Assistance Division amended subsections in each section by changing the deduction amounts.

**8.200.520.12 COLA DISREGARD COMPUTATION**

| <u>Current amt/cost of living</u> | <u>Benefit period</u>                        |
|-----------------------------------|--|
| <u>Current Title II amount</u> =  | Benefit before <del>[4/03]</del> <u>1/04</u> |
| <del>[1-014]</del> <u>1.021</u>   |  |
| <u>Benefit before 1/04</u> =      | <u>Benefit before 1/03</u>                   |
| <u>1.014</u>                      |  |
| <u>Benefit before 1/03</u> =      | Benefit before 1/02                          |
| <u>1.026</u>                      |  |
| <u>Benefit before 1/02</u> =      | Benefit before 1/01                          |
| <u>1.035</u>                      |  |
| <u>Benefit before 1/01</u> =      | Benefit before 1/00                          |
| <u>1.025</u>                      |  |
| <u>Benefit before 1/00</u> =      | Benefit before 1/99                          |
| <u>1.013</u>                      |  |
| <u>Benefit before 1/99</u> =      | Benefit before 1/98                          |
| <u>1.021</u>                      |  |
| <u>Benefit before 1/98</u> =      | Benefit before 1/97                          |
| <u>1.029</u>                      |  |
| <u>Benefit before 1/97</u> =      | Benefit before 1/96                          |
| <u>1.026</u>                      |  |
| <u>Benefit before 1/96</u> =      | Benefit before 1/95                          |
| <u>1.028</u>                      |  |
| <u>Benefit before 1/95</u> =      | Benefit before 1/94                          |
| <u>1.026</u>                      |  |
| <u>Benefit before 1/94</u> =      | Benefit before 1/93                          |
| <u>1.030</u>                      |  |
| <u>Benefit before 1/93</u> =      | Benefit before 1/92                          |
| <u>1.037</u>                      |  |
| <u>Benefit before 1/92</u> =      | Benefit before 1/91                          |
| <u>1.054</u>                      |  |
| <u>Benefit before 1/91</u> =      | Benefit before 1/90                          |
| <u>1.047</u>                      |  |
| <u>Benefit before 1/90</u> =      | Benefit before 1/89                          |
| <u>1.040</u>                      |  |
| <u>Benefit before 1/89</u> =      | Benefit before 1/88                          |
| <u>1.042</u>                      |  |



|                                       |                     |
|---------------------------------------|---------------------|
| <u>Benefit before 1/88 =</u><br>1.013 | Benefit before 1/87 |
| <u>Benefit before 1/87 =</u><br>1.031 | Benefit before 1/86 |
| <u>Benefit before 1/86 =</u><br>1.035 | Benefit before 1/85 |
| <u>Benefit before 1/85 =</u><br>1.035 | Benefit before 1/84 |
| <u>Benefit before 1/84 =</u><br>1.074 | Benefit before 7/82 |
| <u>Benefit before 7/82 =</u><br>1.112 | Benefit before 7/81 |
| <u>Benefit before 7/81 =</u><br>1.143 | Benefit before 7/80 |
| <u>Benefit before 7/80 =</u><br>1.099 | Benefit before 7/79 |
| <u>Benefit before 7/79 =</u><br>1.065 | Benefit before 7/78 |
| <u>Benefit before 7/78 =</u><br>1.059 | Benefit before 7/77 |

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04]

**8.200.520.13 FEDERAL BENEFIT RATES**

| YEAR    | Individual<br>FBR | Inst.<br>FBR | Indiv.<br>VTR | Couple<br>FBR | Inst.<br>FBR | Couple<br>VTR |
|---------|-------------------|--------------|---------------|---------------|--------------|---------------|
| 1/89 to | \$368             | \$30         | \$122.66      | \$553         | \$60         | \$184.33      |
| 1/90    |                   |              |               |               |              |               |
| 1/90 to | \$386             | \$30         | \$128.66      | \$579         | \$60         | \$193.00      |
| 1/91    |                   |              |               |               |              |               |
| 1/91 to | \$407             | \$30         | \$135.66      | \$610         | \$60         | \$203.33      |
| 1/92    |                   |              |               |               |              |               |
| 1/92 to | \$422             | \$30         | \$140.66      | \$633         | \$60         | \$211.00      |
| 1/93    |                   |              |               |               |              |               |
| 1/93 to | \$434             | \$30         | \$144.66      | \$652         | \$60         | \$217.33      |
| 1/94    |                   |              |               |               |              |               |
| 1/94 to | \$446             | \$30         | \$148.66      | \$669         | \$60         | \$223.00      |
| 1/95    |                   |              |               |               |              |               |
| 1/95 to | \$458             | \$30         | \$152.66      | \$687         | \$60         | \$229.00      |
| 1/96    |                   |              |               |               |              |               |
| 1/96 to | \$470             | \$30         | \$156.66      | \$705         | \$60         | \$235.00      |
| 1/97    |                   |              |               |               |              |               |
| 1/97 to | \$484             | \$30         | \$161.33      | \$726         | \$60         | \$242.00      |
| 1/98    |                   |              |               |               |              |               |
| 1/98 to | \$494             | \$30         | \$164.66      | \$741         | \$60         | \$247.00      |
| 1/99    |                   |              |               |               |              |               |
| 1/99 to | \$500             | \$30         | \$166.66      | \$751         | \$60         | \$250.33      |
| 1/00    |                   |              |               |               |              |               |
| 1/00 to | \$512             | \$30         | \$170.66      | \$769         | \$60         | \$256.33      |
| 1/01    |                   |              |               |               |              |               |
| 1/01 to | \$530             | \$30         | \$176.66      | \$796         | \$60         | \$265.33      |
| 1/02    |                   |              |               |               |              |               |
| 1/02 to | \$545             | \$30         | \$181.66      | \$817         | \$60         | \$272.33      |
| 1/03    |                   |              |               |               |              |               |
| 1/03 to | \$552             | \$30         | \$184.00      | \$829         | \$60         | \$276.33      |
| 1/04    |                   |              |               |               |              |               |
| 1/04 to | \$564             | \$30         | \$188         | \$846         | \$60         | \$282.00      |
| 1/05    |                   |              |               |               |              |               |

Ineligible child deeming allocation: [~~\$277.00~~] \$282.00

Part B premium is [~~\$58.70~~] \$66.60 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

Effective January 1, 1989, the SSI resource standard was increased to \$2,000 for an individual and \$3,000 for a couple. These amounts did not change in 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, ~~or~~ 2003, or 2004.

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03;

A, 1-1-04]

**8.200.520.15 SSI LIVING ARRANGEMENTS**

**A. Individual living in his/her own household who own or rent**

Payment amount: [~~\$552~~] \$564 Individual  
[~~\$829~~] \$846 Couple

**B. Individual receiving support and maintenance payments:** For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$552 - \$184 = \$368.00~~] \$564 - \$188 = \$376 Individual  
[~~\$829 - \$276.33 = \$552.67~~] \$846 - \$282 = \$564 Couple

**C. Individual or couple living household of another:** For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$552 - \$184 = \$368.00~~] \$564 - \$188 = \$376 Individual  
[~~\$829 - \$276.33 = \$552.67~~] \$846 - \$282 = \$564 Couple

**D. Child living in home with his/her parent(s)**

Payment amount: [~~\$552~~] \$564

**E. Individual in institution**

Payment amount: \$30.00

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04]

**8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES:** Effective January 1, [~~2003~~] 2004, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$1,636~~] \$1,672.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04]

**8.200.520.20 COVERED QUARTER INCOME STANDARD:**

| <u>DATE</u>           | <u>CALENDAR QUARTER AMOUNT</u> |
|-----------------------|--------------------------------|
| Jan. 2004 - Dec. 2004 | \$900 per calendar quarter     |
| Jan. 2003 - Dec. 2003 | \$890 per calendar quarter     |
| Jan. 2002 - Dec. 2002 | \$870 per calendar quarter     |

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04]

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

This is an amendment to 8.202.400 NMAC, Section 21, which will be effective on January 1, 2004. The Medical Assistance Division amended language to remove school attendance requirements for children under 18 years of age and clarify school attendance requirements for children 18 years of age.

**8.202.400.21 SCHOOL ATTENDANCE - REQUIREMENT:**

[For purposes of eligibility for JUL Medicaid, school attendance is required for children who are 16, 17, and 18 years of age. Criteria for attendance is defined in Manual Section 8.102.420.9 NMAC. For children under age 16, there is no school attendance requirement. A child who is under 16 and who is ineligible for NMW solely on the basis of school attendance can be eligible for JUL Medicaid, if all other criteria are met.] School attendance is required for children who are 18 years of age. There is no school requirement for children under age 18. A child 18 years of age must be a full-time student at a certified educational facility or participating and fully complying

with a home-schooling program approved by the New Mexico state department of education. Whether a child is considered a full-time student and meeting full-time attendance requirements is based on the standards of the educational facility or program in which the child is enrolled. Children who have received a general equivalency development (GED) certificate or are early high school graduates are considered to have met school attendance requirements and continue to be JUL medicaid eligible until age 19. School attendance requirements are evaluated only at the time of JUL medicaid application or recertification.  
[4-1-98, 3-1-00; 8.202.400.21 NMAC - Rn, 8 NMAC 4.JUL.422, 7-1-01; A, 10-1-01; A, 1-1-04]

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

This is an amendment to 8.302.5 NMAC, Sections 9 through 13 which will be effective on January 1, 2004. The Medical Assistance Division amended the above sections in order to comply with the Health Insurance Portability and Accountability Act (HIPAA) and some grammatical

changes were made. In the Part name, the word Approval has been changed to Authorization. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.705 to comply with the NMAC requirements.

**PART 5 PRIOR [APPROVAL] AUTHORIZATION AND UTILIZATION REVIEW**

**8.302.5.9 PRIOR [APPROVAL] AUTHORIZATION AND UTILIZATION REVIEW:**

The New Mexico human services department's medical assistance division (MAD) [~~in conjunction with its surveillance and utilization review unit, its utilization review contractors, and other state agencies~~] has developed a utilization review process to regulate provider compliance with medicaid quality control and cost containment objectives. See 42 CFR Section 456, *Utilization Control*. This part describes medical necessity requirements, general utilization review processes and types of utilization reviews that [~~can~~] may be used by MAD. Specific details pertinent to a service or a provider are contained in program policies or utilization review instructions for that specific service or provider type. Once enrolled, providers receive a packet of information including

medicaid program policies, billing instructions, utilization review instructions, medical necessity criteria, and ~~[forms needed to document medical necessity]~~ prior authorization forms. It is the provider's responsibility to understand the information provided and comply with the requirements. [2/1/95, 11/1/96; 8.302.5.9 NMAC - Rn, 8 NMAC 4.MAD.705 & A, 1/1/04]

### 8.302.5.10 MEDICAL NECESSITY REQUIREMENTS:

The New Mexico medicaid program (medicaid) reimburses providers for furnishing covered services to medicaid recipients only when the services are medically necessary. Medical necessity is required for the specific service, level of care, and service setting, if relevant to the service. Providers must verify that medicaid covers a ~~[particular]~~ specific service and that the services are medically necessary prior to furnishing services. Medical necessity determinations are made by professional peers based on established criteria, appropriate to the service(s) ~~[which]~~ that are reviewed and approved by MAD. Medicaid denies payment for services that are not medically necessary and for services that are not covered by medicaid. The process for determining medical necessity is called utilization review. Utilization review (UR) of medicaid services ~~[can]~~ may be performed directly by MAD, another state agency designated by MAD, or a UR contractor under contract with MAD.

[2/1/95, 11/1/96; 8.302.5.10 NMAC - Rn, 8 NMAC 4.MAD.705.1 & A, 1/1/04]

### 8.302.5.11 TIMING OF UTILIZATION REVIEW:

A. Utilization review ~~[can]~~ may be performed at any time during the service, payment, or post payment processes. In signing the medicaid provider agreement, providers agree to cooperate fully with MAD or its designee in their performance of any review and agree to comply with all review requirements. The following are examples of the reviews ~~[which can]~~ that may be performed:

(1) prior ~~[approval]~~ authorization review (review occurs before the service is furnished);

(2) concurrent review (review occurs while service is being furnished);

(3) pre-payment review (claims review occurring after service is furnished but before payment); ~~[and]~~

(4) retrospective review (review occurs after ~~[the]~~ payment is made); ~~[and]~~

(5) one or more reviews ~~[can]~~ may be used by MAD to assess the medical necessity and program compliance of any service.

B. Prior ~~[approval]~~

**authorization reviews:** Claims for services that require prior ~~[approval]~~ authorization are paid only if the prior ~~[approval was granted]~~ authorization was obtained and approved by MAD or MAD's UR contractor prior to services being furnished. A prior ~~[approval usually]~~ authorization specifies the approved number of service units ~~[which]~~ that a provider is authorized to furnish to a recipient and the ~~[date(s) by which the service]~~ date(s) the service(s) must be provided.

(1) Prior ~~[approval]~~ authorization does not guarantee that individuals are eligible for medicaid benefits. Providers must verify that individuals are eligible for medicaid at the time services are furnished.

(2) Information on the specific service(s) or procedure(s) that require prior ~~[approval]~~ authorization for a ~~[given]~~ specific provider type are contained in the applicable policy sections and/or the utilization review instructions for that provider type or service.

(3) ~~[The fact that a service is prior]~~ Services that have been approved by MAD or its designee does not ~~[preclude]~~ prevent a later denial of payment if the service ~~[is]~~ has been determined to ~~[have been medically unnecessary or]~~ be not medically necessary or if the individual was not eligible for the service.

(4) Prior ~~[approval]~~ authorization reviews are used to authorize service for eligible recipients before services are furnished. Requests for retroactive prior ~~[approval can be granted only in the following instances:]~~ authorization may be approved only under the following circumstances.

(a) approval is made as part of the process of determining medicaid eligibility for certain categories, such as institutional care medicaid or home and community-based services waiver (HCBSW) programs. In these situations, the determination of medical necessity for an institutional care level of the service is a factor in establishing medicaid eligibility and ~~[can]~~ may be made after the individual receives nursing facility or HCBSW services;

(b) ~~[the]~~ service is furnished before the determination of the effective date of the recipient's eligibility for medicaid or the servicing provider's medicaid participation agreement. Retrospective requests for prior ~~[approval]~~ authorization based on retrospective recipient or provider eligibility must be received in writing by MAD or its designee within thirty (30) calendar days of the date of the eligibility determination;

(c) in cases of medical emergency. A medical emergency is defined as a medical condition, manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention

could be reasonably expected to result in one of the following.

(i) an individual's death;

(ii) placement of an individual's health in serious jeopardy;

(iii) serious impairment of bodily functions; or

(iv) serious dysfunction of any bodily organ or part.

(d) ~~[service is]~~ services that are furnished to a medicare recipient who is also eligible for medicaid and medicare has denied payment for a reason ~~[which]~~ that is not based on medical necessity. Requests for retroactive prior ~~[approval]~~ authorization must be accompanied by a copy of the document from medicare ~~[which]~~ that denied payment and states the reason(s) for denial. Services denied payment by medicare because of lack of medical necessity are not covered by medicaid; ~~[and]~~.

~~[(e) When authorized for a specified service by another provision of the medical assistance division program manual policy section.]~~

C. **Concurrent reviews:** Concurrent reviews are conducted while the service is being furnished. Continued stay or continued service reviews are concurrent reviews for medical necessity.

D. **Prepayment reviews:** Prepayment reviews are conducted after services have been furnished and claims for payment have been filed by providers. If a service is not a covered medicaid benefit or not medically necessary, payment for that service will be denied.

E. **Retrospective review:** Retrospective reviews are conducted after the claim has been processed and payment is made. Information from the paid claim is compared with the provider records detailing the services and medical necessity.

(1) If MAD determines that the services specified on the claim were not performed ~~[(not documented)]~~ or, were not a covered benefit or were not medically necessary, the MAD payments are recouped.

(2) Retrospective review involves the review of a specific portion or ~~[the]~~ entire record of service. Depending on the service, validation of diagnosis and/or procedure, validation of diagnostic related groups (DRGs), and quality of care are examples of indicators or issues which ~~[can]~~ may be reviewed.

(3) Retrospective reviews ~~[can]~~ may be conducted by MAD or its designee on a random or selective basis. In addition to reviews performed by a MAD ~~[staff or its]~~ designee, MAD analyzes statistical data to ~~[access]~~ determine utilization patterns. Specific areas of overutilization ~~[are identified which]~~ may be identified that result in

recoupment or repayment from providers and/or the assignment of a recipient to a medical management designated provider.

(4) Selective or scheduled reviews are conducted to focus on the overutilization and underutilization of a ~~particular~~ specific service or provider. The services or procedures selected for this focused retrospective review are identified by MAD as ~~potentially or actually problematic~~ potential or actual problems. [2/1/95; 11/1/96; 8.302.5.11 NMAC - Rn, 8 NMAC 4.MAD.705.2 & A, 1/1/04]

**8.302.5.12 DENIAL OF PAYMENT:** If a service or procedure is not medically necessary or not a covered medicaid ~~service, MAD can~~ benefit, MAD may deny a provider's claim for payment. If MAD determines that a service is not medically necessary before the claim payment, the claim is denied. If this determination is made after payment, the payment amount is subject to recoupment or repayment. [2/1/95; 8.302.5.12 NMAC - Rn, 8 NMAC 4.MAD.705.3 & A, 1/1/04]

**8.302.5.13 REVIEW OF DECISIONS:** Providers who disagree with prior ~~approval~~ authorization request denials or other review decisions ~~can~~ may request a re-review and a reconsideration from MAD or the MAD designee that performed the initial review and issued the initial decision. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions*. Providers who are ~~dissatisfied~~ not satisfied with a reconsideration determination ~~can~~ may request an administrative hearing. See 8.353.2 NMAC, *Provider Hearings*. [2/1/95; 8.302.5.13 NMAC - Rn, 8 NMAC 4.MAD.705.4 & A, 1/1/04]

## NEW MEXICO MINING COMMISSION

The following are amendments to Subsections C and D of 19.10.12.1205 NMAC; Subsection B of 19.10.12.1206 NMAC; Subsection G of 19.10.12.1208 NMAC; and Subsection F of 19.10.12.1210 NMAC to be effective 12-30-03.

### 19.10.12.1205 DETERMINATION OF FINANCIAL ASSURANCE AMOUNT:

A. The amount of the financial assurance shall be determined by the director and take into account, but not be limited to, the estimated cost submitted by the permittee or the applicant. This estimated cost should include at a minimum the following costs: contract administration;

mobilization; demobilization; engineering redesign; profit and overhead; procurement costs; reclamation or closeout plan management; and contingencies. Credit for salvage value of building materials or abandoned equipment and supplies shall not be allowed. Equipment normally available to a third party contractor should be used in determining the estimated cost;

(1) reflect the probable difficulty of reclamation or closure, giving consideration to such factors as topography, geology, hydrology, revegetation potential and approved post-mining land use;

(2) depend on the requirements of the approved permit;

(3) not duplicate any federal or state financial requirements for the same area so long as those entities' financial assurance requirements are at least as stringent as this part; and

(4) not be less comprehensive than the federal requirements, if any.

B. The amount of the financial assurance shall be sufficient to assure the completion of the reclamation plan or closeout plan if the work has to be performed by the state of New Mexico or a contractor with the state in the event of forfeiture.

C. The director may accept a net present value calculation for the amount of financial assurance required pursuant to Subsections A and B of 19.10.12.1205 NMAC, if the scheduled completion date for the reclamation or closeout plan exceeds five years following closure, not including the 12 year period described in Subsection A of 19.10.12.1204 NMAC for re-establishing vegetation, and if the financial assurance will be provided in the form of cash or other allowable form of financial assurance to be converted into cash upon forfeiture. The director shall require an appropriate adjustment be made to the net present value calculation to exclude anticipated delays for converting financial assurance into cash.

(1) The net present value calculation shall be based upon projected inflation rates and projected rates of return over the term of the reclamation plan and shall be based upon publicly available indices and data. The director shall determine whether a proposed net present value calculation is acceptable and complies with the requirements of Subsection B of 19.10.12.1205 NMAC. The director shall issue guidance on acceptable methods for calculating net present value within one year from the effective date of this rule.

(2) The director shall review any approved net present value calculation as needed, but at least once every five years, to take into consideration additional information regarding rates of return and inflation

rates.

~~C.~~ D. The amount of financial assurance for a minimal impact existing and new mining operations shall be as provided for in Subsection F of 19.10.3.303 NMAC and Subsection E of 19.10.3.304 NMAC, respectively.

[7-12-94, 2-15-96; 19.10.12.1205 NMAC - Rn, 19 NMAC 10.2.12.1205, 05-15-2001; A, 10-15-03; A, 12-30-03]

### 19.10.12.1206 ADJUSTMENT OF AMOUNT:

A. The amount of the financial assurance required and the terms of its acceptance shall be adjusted by the director from time-to-time as the area requiring financial assurance is increased or decreased or when the future reclamation or closeout costs change. The director may specify periodic times or set a schedule for re-evaluating and adjusting the financial assurance amount.

B. The director shall:

(1) notify the permittee, the surety, any person with a property interest in collateral who has requested notification under Subsection C, Paragraph ~~5~~ 4 of 19.10.12.1208 NMAC and any person who has requested notification of actions concerning the mining operation, of any proposed adjustment to the financial assurance amount; and

(2) provide the permittee an opportunity for an informal conference on the adjustment.

C. Permittee may request reduction of the amount of the financial assurance upon submission of evidence to the director demonstrating that the permittee's methods of operation or other circumstances reduce the estimated cost for the state of New Mexico or its contractor to reclaim or complete the closeout plan for the area. Adjustments which involve undisturbed land or revision of the cost estimate for reclamation or closeout plan completion are not considered financial assurance release subject to procedures of 19.10.12.1210 NMAC.

D. In the event that the approved permit is revised or modified, the director shall review the financial assurance for adequacy, and if necessary, shall require adjustment of the financial assurance to conform to the permit as revised or modified.

[7-12-94, 2-15-96; 19.10.12.1206 NMAC - Rn, 19 NMAC 10.2.12.1206, 05-15-2001; A, 12-30-03]

### 19.10.12.1208 FINANCIAL ASSURANCE MECHANISMS:

A. Surety Bonds

(1) A surety bond shall be executed by the applicant or the permittee and a

corporate surety licensed to do business in the state of New Mexico.

(2) Surety bonds shall be noncancelable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior written consent of the director. The director shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(3) Surety bond terms shall be established for a minimum of five years. One hundred and twenty (120) days prior to the expiration of the term, the operator must provide the director with evidence that the current surety bond will be continued, another surety company is to provide a financial assurance, or another form of financial assurance will replace the surety bond. Upon receiving notification, the director shall respond to the permittee within 30 days, in writing, indicating whether or not the proposed form and amount of financial assurance will be acceptable. If adequate financial assurance is not provided 30 days prior to the expiration of the term of the original surety bond, the permittee shall cease operations and shall forfeit the existing surety bond. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided. If an acceptable financial assurance is provided within a time frame specified by the director, not to exceed 180 days, the forfeited funds, less any costs associated with the forfeiture, will be refunded to the surety company. If adequate financial assurance is not provided within the specified time frame, the director will authorize reclamation of the mining operation using the forfeited funds.

#### B. Letters of Credit

(1) The letter of credit must be issued by a bank organized or authorized to do business in the United States. The director may require an independent rating of the proposed bank and the cost of any such rating shall be paid by the applicant or permittee.

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous financial assurance coverage shall be forfeited and shall be collected by the state of New Mexico if not replaced by other suitable financial assurance or letter of credit at least 30 days before its expiration date.

(3) Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided. If an acceptable financial assurance is provided within a time frame specified by the director, not to exceed 180 days, the payment amount, less any costs associated with the demand for payment, will be refunded to the bank. If financial assurance is not provided within

the specified time frame, the director will authorize reclamation of the mining operation using the payment from the letter of credit.

(4) The letter of credit shall be payable to the state of New Mexico upon demand, in part or in full, upon receipt from the director of a notice of forfeiture issued in accordance with 19.10.12.1211 NMAC.

#### C. Collateral Bonds

##### (1) Valuation of Collateral

(a) If the nature of the collateral proposed to be given as security for financial assurance is subject to fluctuations in value over time, the director shall require that such collateral have a fair market value at the time of permit approval in excess of the financial assurance amount by a reasonable margin. The amount of such margin shall reflect changes in value anticipated over a period of five years, including depreciation, appreciation, marketability and market fluctuation. In any event, the director shall require a margin for legal fees and costs of disposition of the collateral in the event of forfeiture.

(b) The annual report filed by the permittee must indicate the current market value of any collateral accepted by the director pursuant to this part.

(c) The financial assurance value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, as necessary, its amount increased or decreased. In no case shall the value attributed to the collateral exceed its market value.

(2) Collateral bonds, except for cash accounts and real property, shall be subject to the following conditions:

(a) the director must have custody of collateral deposited by the applicant or permittee until authorized for release or replacement as provided in this part;

(b) the director shall value collateral at its current market value, not at face value;

(c) the director shall not accept as collateral shares of stock issued by the following: applicant or permittee; an entity that owns or controls the applicant or permittee; or an entity owned or controlled by the applicant or permittee;

(d) the director shall require that certificates of deposit be made payable to or assigned to the state of New Mexico, both in writing and upon the records of the bank issuing the certificates; if assigned, the director shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates prior to the director's acceptance;

(e) the director shall not accept an individual certificate of deposit in an amount in excess of one hundred thousand dollars (\$100,000) or the maximum insur-

able amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

(3) Real property provided as a collateral bond shall meet the following conditions:

(a) the real property must be located in the state of New Mexico. The real property cannot be within the permit or affected area of a mining operation;

(b) the permittee shall grant the state of New Mexico a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with state law or otherwise dispose of the property in the event of forfeiture under 19.10.12.1211 NMAC;

(c) for the director to evaluate the adequacy of the real property, the permittee must submit the following information for the real property, unless the director, for good cause, waives any of the requirements:

(i) a description of the property, which shall include a site improvement survey plat to verify legal descriptions of the property and to identify the existence of recorded easements;

(ii) the fair market value as determined by a current appraisal conducted by an independent qualified appraiser, previously approved by the director;

(iii) proof of ownership and title to the real property;

(iv) a current title binder which provides evidence of clear title containing no exceptions, or containing only exceptions acceptable to the director; and

(v) phase I environmental assessment.

(d) in the event the permittee pledges water rights, the permittee shall provide such additional information as may be required by the director to meet any additional conditions prescribed by him for accepting water rights as collateral.

(4) Persons with an interest in collateral provided as financial assurance who desire notification of actions affecting the collateral shall request the notification in writing to the director at the time collateral is offered.

D. Cash accounts shall be subject to the following conditions.

(1) The director may authorize the applicant or permittee to meet its financial assurance obligations through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the state of New Mexico.

(2) Any interest paid on a cash account must be retained in the account and applied to the account unless the director

has approved the payment of interest to the permittee.

(3) Certificates of deposit may be substituted for a cash account with the approval of the director.

(4) The director shall not accept an individual cash account in an amount in excess of one hundred thousand dollars (\$100,000) or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation, unless the cash account has been deposited with the state of New Mexico.

**E.** Trusts shall be subject to the following conditions.

(1) The director may approve the use of a trust to hold and manage funds for the purpose of implementing reclamation as prescribed in the closeout plan. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency and which has been approved by the director. The director must be notified of any change of trustee and any successor trustees must be approved by the director.

(2) The trust fund is also subject to the following conditions:

(a) the initial payment into the trust must be made by the date established by the director;

(b) the trust shall be funded in accordance with the terms of the permit;

(c) investments of the trust shall be reviewed and approved by the director and may include fixed income investments such as U.S. treasury obligations, state issued securities, time deposits and other investments of similar risk as approved by the director;

(d) income accrued on trust funds shall be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust;

(e) the trustee may be compensated under terms defined by the director, upon approval of the director;

(f) the trust may be terminated by the permittee only if the permittee substitutes, with the approval of the director, alternate financial assurance as specified in this section or the permittee has completed reclamation in accordance with Subsection E of 19.10.12.1210 NMAC;

(g) a copy of the trust agreement, as well as quarterly and annual reports of the trustee on the trust fund balance shall be provided to the director upon request;

(h) any disbursement of funds from the trust shall be approved by the director in writing.

**F.** Insurance

(1) The insurer must be authorized to transact the business of insurance in

the state of New Mexico and a licensed carrier or a registered carrier of surplus lines of insurance or reinsurance and authorized to transact business of insurance in the state of New Mexico, and have an AM BEST rating of not less than A- or the equivalent rating of other recognized rating companies.

(2) The insurance policy shall be issued for the amount equal to the closeout plan cost estimate as approved by the director or for a lesser amount if used in conjunction with other forms of financial assurance and approved by the director.

(3) The insurance policy shall guarantee that funds will be available for reclamation in accordance with the closeout plan and that the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction of the director. Actual payments by the insurer will not change the face amount, although the insurer's future liability may be reduced by the amount of the payments, during the policy period.

(4) The permittee must maintain the policy in full force and effect until the director approves termination or replacement of insurance with another form of financial assurance acceptable to the director.

**G.** Third party guarantee

~~(1) The director may accept third party guarantees so long as they do not constitute any form of self guarantee or self insurance. The director shall determine whether relationship of guarantor to permittee would result in a self guarantee by reviewing the following:~~

~~(a) financial information submitted by permittee to identify fiscal and operational relationships;~~

~~(b) the percentage of the corporation's business which relies on the permittee's activities; and~~

~~(c) any other information deemed relevant by the director.]~~

(1) A third party guarantee is a written agreement from a guarantor, which provides that if the permittee fails to complete the performance requirements of the permit, including closure and reclamation, the guarantor shall do so or, upon forfeiture in accordance with 19.10.12.1211 NMAC, shall fund such account(s) as the director may instruct in the full amount of that portion of the financial assurance covered by the third party guarantee.

(a) A third party guarantee may not exceed seventy-five percent of the total amount of the financial assurance for a permit established pursuant to 19.10.1205 NMAC. Any permittee with a third party guarantee in place at the effective date of this subparagraph shall meet the limitation within one year after the effective date of this subparagraph.

(b) A third party guarantee may not include any type of self-guarantee or self-insurance. The director may investigate to determine whether a sham relationship exists between the guarantor and the permittee. The director may reject a third party guarantee as a form of self-guarantee if the director concludes that substantial evidence supports a finding that either the guarantor or the permittee exercises dominion and control over the other so pervasive as to render the one a mere instrumentality of the other.

(2) The permittee or applicant shall submit financial information as requested by the director unless doing so would place guarantor in violation of an applicable legal requirement.

(3) The third party guarantee shall be signed by an authorized representative, and legal counsel of the guarantor shall certify that the guarantor can legally engage in the guarantee and shall certify the amounts and names of beneficiaries of all other guarantees for which the guarantor is obligated.

(4) If the guarantor is a corporation, the authorization documentation will include a board of directors' resolution or shareholder's vote or similar verification and proof that the corporation can validly execute a guarantee under the laws of the state or country of its incorporation, and its bylaws and articles of incorporation.

(5) If the guarantor is a partnership, joint venture, syndicate, or other business entity, each party or an authorized representative for the party with the beneficial interest, direct or indirect, shall sign the agreement.

(6) The guarantor's financial statements shall be audited by an independent certified public accountant and the accountant's certification provided to the director. All costs and fees for such audit and certification shall be paid by the applicant or permittee. If the accountant gives an adverse opinion of the financial statements, the guarantor cannot qualify for the third party guarantee. The permittee shall also pay for any evaluation and analysis by an independent reviewer selected by the director to evaluate and analyze for the director any information regarding the guarantor provided to the director or requested by the director to evaluate the guarantor's financial ability to provide a guarantee.

(7) The guarantor as well as its successors and assignees agree to remain bound jointly and severally liable for all litigation costs incurred in any successful effort to enforce the third party guarantee against the guarantor.

(8) The guarantor must demonstrate financial soundness by meeting either alternative I or alternative II soundness tests.

(a) Alternative I financial soundness test:

(i) guarantor has a tangible net worth of at least ten million dollars (\$10,000,000);

(ii) guarantor's tangible net worth and working capital are each equal to or greater than six times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated;

(iii) guarantor's assets located in the United States amount to at least ninety percent of its total assets or its total assets in the United States are at least six times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated; and

(iv) guarantor meets at least two of the following three financial ratios: the ratio of total liabilities to net worth is less than 2:1; the ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities is greater than 0.1:1; the ratio of current assets to current liabilities is greater than 1.5:1.

(b) Alternative II financial soundness test:

(i) guarantor's most recently issued senior credit obligation are rated "BBB" or higher by standard and poor's corporation, or "Baa" or higher by moody's investors service, inc.;

(ii) the guarantor has a tangible net worth of at least ten million dollars (\$10,000,000) and is greater than six times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated; and

(iii) guarantor's assets located in the United States amount to at least ninety percent of its total assets or its total assets in the United States are at least six times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated.

(9) The director may require monitoring of the guarantor's financial condition by a contractor with the state during the time that a third party guarantee is used for financial assurance. The costs of such monitoring shall be paid by the permittee. The frequency of such monitoring shall be determined by the director.

(10) At any time that the guarantor's financial condition is such that the guarantor no longer qualifies pursuant to this part, the permittee shall be deemed without financial assurance coverage. The director shall specify to the permittee in writing a reasonable period, not to exceed 90 days, to replace the financial assurance

coverage. If adequate financial assurance is not provided by the end of the period allowed, the permittee shall cease mining and shall immediately begin to conduct reclamation or closeout measures in accordance with the reclamation or closeout plan. The director may, for good cause shown, grant up to two 30-day extensions. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided.

[7-12-94, 2-15-96, 12-14-96, 6-30-98, 12-29-2000; 19.10.12.1208 NMAC - Rn, 19 NMAC 10.2.12.1208, 05-15-2001; A, 10-15-03; A, 12-30-03]

#### 19.10.12.1210 RELEASE OF FINANCIAL ASSURANCE:

##### A. Release Application

(1) The permittee may file an application with the director for the release of all or part of the financial assurance. The permittee may file only one release application per year for each permit.

(2) The application shall describe the reclamation or closeout measures completed and shall contain an estimate of the cost of reclamation that has not been completed.

(3) At the time the release application is filed with the director, the permittee shall submit proof that the notice of application has been provided in accordance with 19.10.9.902 NMAC and 19.10.9.903 NMAC. The notice shall be considered part of any release application and shall contain: the permittee's name; permit number and approval date; notification of the precise location of the real property affected; the number of acres; the type and amount of the financial assurance filed and the portion sought to be released; the type and appropriate dates of reclamation or closeout plan performed; a description of the results achieved as they relate to the permittee's approved reclamation or closeout plan; and the name and address of the director, to whom written comments, objections, or requests for public hearings on the specific financial assurance release may be submitted pursuant to Subsection C of 19.10.12.1210 NMAC.

(4) The director shall promptly provide notice of receipt of the application for release of all or part of the financial assurance to the environment department, the office of the state engineer, the department of game and fish, the forestry division, the state historic preservation division, other agencies he deems appropriate, and if the operation is on state or federal land, to the appropriate state or federal land management agency.

##### B. Inspection by director.

Upon receipt of the complete financial

assurance release application, the director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation or closeout measures completed. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation. The surface owner or lessor of the real property, other state and federal agencies as listed in Subsection A, Paragraph 4 of 19.10.12.1210 NMAC above, and any other persons who have requested advance notice of the inspection shall be given notice of such inspection and may be present at the release inspection as may any other interested members of the public. The director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the financial assurance release, for the purpose of gathering information relevant to the proceeding.

##### C. Public Hearing

(1) Within 30 days from the date of the inspection, a person with an interest that is or will be adversely affected by the proposed financial assurance release may file written objections to the proposed release with the director. If written objections are filed and a hearing is requested, the director shall inform all persons who have requested notice of hearings and persons who have filed written objections in regard to the application of the time and place of the hearing at least 30 days in advance of the public hearing. The hearing shall be held in the locality of the permit area proposed for release.

(2) The date, time and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality of the permit area once a week for two consecutive weeks. All persons who have submitted a written request in advance to the director to receive notices of hearings shall be provided notice at least 30 days prior to the hearing. The hearing procedures of 19.10.9.905 NMAC shall be followed.

D. Within 45 days from the inspection, if no public hearing is held pursuant to Subsection C of 19.10.12.1210 NMAC, or, within 45 days after a public hearing has been held pursuant to Subsection C of 19.10.12.1210 NMAC, the director shall notify in writing the permittee, the surety or other persons with an interest in the collateral who have requested notification under 19.10.12.1208 NMAC and the persons who either filed objections in writing or participants in the hearing proceedings who supplied their addresses to the director, if any, of the decision whether to release all or part of the financial assurance.

E. The director may release all or part of the financial assurance

for the entire permit area or incremental area if the director is satisfied that the reclamation or closeout plan or a phase of the reclamation or closeout plan covered by the financial assurance, or portion thereof, has been accomplished in accordance with the act, 19.10 NMAC, and the permit.

**F.** If the director denies the release application or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Subsection C, Paragraph [§]4 of 19.10.12.1208 NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release.

**G.** The director may approve an application for release of financial assurance for a minimal impact operation without public notice or hearing. [7-12-94, 2-15-96; 19.10.12.1210 NMAC - Rn, 19 NMAC 10.2.12.1210, 05-15-2001; A, 12-30-03]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### Notice of Repeal

1.18.333 NMAC, Executive Records Retention and Disposition Schedule for the Department of Taxation and Revenue, is hereby repealed and replaced with the new 1.18.333 NMAC, Executive Records Retention and Disposition Schedule for the Taxation and Revenue Department, effective January 5, 2004. 1.18.378 NMAC, Executive Records Retention and Disposition Schedule for the State Personnel Board, is hereby repealed and replaced with the new 1.18.378 NMAC, Executive Records Retention and Disposition Schedule for the State Personnel Office, effective January 5, 2004. 1.18.516 NMAC, Executive Records Retention and Disposition Schedule for the Department of Game and Fish, is hereby repealed and replaced with the new 1.18.516 NMAC, Executive Records Retention and Disposition Schedule for the Department of Game and Fish, effective January 5, 2004. 1.18.624 NMAC, Executive Records Retention and Disposition Schedule for the Agency on Aging is hereby repealed and replaced with the new 1.18.624 NMAC, Executive Records Retention and Disposition Schedule for the Aging and Long-Term Care Department, effective January 5, 2004. The current rules were repealed by the New Mexico Commission of Public Records at their December 2, 2003 meeting. The new rules were approved by the New Mexico Commission of Public Records at their

December 2, 2003 meeting.

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

November 18, 2003

Donald L. Padilla, Records Management  
Division Director  
NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87505

Mr. Padilla:

You recently requested to publish a synopsis in lieu of publishing the full content of the following listed rules:

- \* 1.18.333 NMAC ERRDS, NM Taxation and Revenue Department (repeal and replace);
- \* 1.18.378 NMAC ERRDS, NM State Personnel Office (repeal and replace).
- \* 1.18.516 NMAC ERRDS, NM Game and Fish Department (repeal and replace); and
- \* 1.18.624 NMAC ERRDS, NM Aging and Long-term Care Department (repeal and replace).

A review of these rules shows that their most impact is limited to the individual agencies to which they pertain, and they are "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for each is approved.

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/dlp

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.333 NMAC ERRDS, Taxation and Revenue Department

**1. Subject matter:** 1.18.333 NMAC, Executive Records Retention and Disposition Schedule for the Taxation and Revenue Department. This rule is new and replaces 1.18.333 NMAC ERRDS, Taxation and Revenue Department an outdated version that was filed on 6/8/2000. This records retention and disposition schedule is a timetable for the management of specific records series of the Taxation

and Revenue Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Taxation and Revenue Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Taxation and Revenue Department. Persons and entities normally subject to the rules and regulations of the Taxation and Revenue Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Taxation and Revenue Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Taxation and Revenue Department. Any person or entity outside the covered geographical area that conducts business with or through the Taxation and Revenue Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** January 05, 2004.

### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of



1.18.333 NMAC ERRDS, Taxation and Revenue Department.

Roberta D. Joe Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.378 NMAC ERRDS, State Personnel Office

**1. Subject matter:** 1.18.378 NMAC, Executive Records Retention and Disposition Schedule for the State Personnel Office. This rule is new and replaces 1.18.378 NMAC ERRDS, State Personnel Office an outdated re-numbered version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of specific records series of the State Personnel Office. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the State Personnel Office.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the State Personnel Office. Persons and entities normally subject to the rules and regulations of the State Personnel Office may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the State Personnel Office.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the State Personnel Office. Any person or entity outside the covered geographical area that conducts business with

or through the State Personnel Office may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** January 5, 2004.

### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.378 NMAC ERRDS, State Personnel Office.

Roberta D. Joe Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.516 NMAC ERRDS, Department of Game and Fish

**1. Subject matter:** 1.18.516 NMAC, Executive Records Retention and Disposition Schedule for the Department of Game and Fish. This rule is new and replaces 1.18.516 NMAC ERRDS, Department of Game and Fish an outdated re-numbered version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of specific records series of the Department of Game and Fish. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule

was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Department of Game and Fish.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Department of Game and Fish. Persons and entities normally subject to the rules and regulations of the Department of Game and Fish may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Department of Game and Fish.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Game and Fish. Any person or entity outside the covered geographical area that conducts business with or through the Department of Game and Fish may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** January 05, 2004.

### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.516 NMAC ERRDS, Department of Game and Fish.

Roberta D. Joe Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.624 NMAC ERRDS, Aging and Long-Term Care Department

**1. Subject matter:** 1.18.624 NMAC, Executive Records Retention and Disposition Schedule for the Aging and Long-Term Care Department. This rule is new and replaces 1.18.624 NMAC ERRDS, Agency on Aging an outdated re-numbered version that was filed on 6/21/2002. This records retention and disposition schedule is a timetable for the management of specific records series of the Aging and Long-Term Care Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Aging and Long-Term Care Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Aging and Long-Term Care Department. Persons and entities normally subject to the rules and regulations of the Aging and Long-Term Care Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Aging and Long-Term Care Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Aging and Long-Term Care Department. Any person or entity outside the covered geographical area that conducts business with or through the Aging and Long-Term Care Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505.

Telephone number: (505) 476-7900.

**7. Effective date of this rule:** January 05, 2004.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.624 NMAC ERRDS, Aging and Long-Term Care Department.

\_\_\_\_\_  
Roberta D. Joe Date  
Assistant Attorney General

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.2 NMAC, Sections 7, 9, and 306.

#### **1.15.2.7 DEFINITIONS:**

**A.** "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

**B.** "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2, NMSA 1978).

**C.** "Audit" means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.

**D.** "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978).

**E.** "Pending litigation" means a proceeding in a court of law whose activity is in progress but not yet completed.

**F.** "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

**G.** "Records retention period" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

**H.** "Records retention schedule" means a document prepared as part of a records retention program that lists the period of time for retaining records.

**I.** "Website" means a presence on the internet or intranet containing information that represents an agency or presents information on specific subjects or

allows transactions to be conducted through the use of links or webpages. A website is normally hosted and maintained by an agency or by another entity sharing internet resources or through an internet service provider.

[8-8-96; 5-19-97; 1.15.2.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 1/6/2002; A, 1/5/2004]

#### **1.15.2.9 INSTRUCTIONS:**

**A.** For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records, 1.15.2 NMAC.

**B.** For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, 1.15.4 NMAC.

**C.** For records of a personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records 1.15.6 NMAC.

**D.** For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC.

**E.** Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

**F.** The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

**G.** Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

**H.** Access to confidential documents or confidential files shall be only by authorization of agency or attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

**I.** All records, papers or documents may be photographed, micro-filmed, microphotographed or reproduced on film. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for

all purposes, including introduction in evidence in all courts or administrative agencies (Section 14-1-5, 14-1-6 NMSA 1978).

**J. Electronic records.** Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems).

**K. An agency should not place an original or official copy of record on an agency's website. An original or official copy of record is a public record, regardless of media, as defined by 14-2-6 NMSA 1978. A public record must be maintained for a specified amount of time and must go through the disposition process as stated in the general or agency's records retention and disposition schedule. An agency should develop a plan for the management of the public records maintained on their website and integrate the plan into the agency's overall records management program. For further guidance see the New Mexico chief information officer's website for standards and guidelines for the creation and maintenance of a website.** [1.15.2.9 NMAC - Rn, 1 NMAC 3.2.90.8 & A, 1/6/2002; A, 1/5/2004]

#### **1.15.2.306 WEBSITE:**

**A. Program:** public relations

**B. Architecture:** The overall design of a website, which can encompass hardware and software, consisting of the how the components are designed, connected to, and operate with one another. The architectural design also contains information on the development and maintenance of informational or transactional websites that may contain documentation on the platform and associated software necessary to operate and maintain an internet or intranet presence.

**(1) informational website:** informational web sites contain information and do not support or conduct business transactions.

**(2) transactional website:** transactional web sites contain information and possess the ability to conduct business transactions.

**C. Description:** records and information hosted electronically and accessible through the internet or intranet. A website may contain information regarding the mission of an agency or the reason for the establishment of a web presence. The website may contain replicated information from an agency such as, names of staff, announcements of meetings, calendar of events, press releases, annual reports, strategic plans, surveys, images, multimedia, audio, transactional forms or pages (e-commerce), etc. The website may also contain unique information found only on the website.

#### **D. Retention:**

**(1) platform (software):** one year after discontinuance of the system.

#### **(2) web content:**

**(a) unique records or information:** see the general or agency program schedule for retention.

**(b) replicated information:** until superseded or no longer relevant.

#### **(3) web site structure:**

**(a) informational web site:** one year after site is updated or changed.

**(b) transactional web site:** three years after site is updated or changed. [Transactional web sites contain or support transactions such as registrations, purchases, etc.]

#### **E. Nota bene:**

**(1) the use of contractors or another entity to host an agency's website does not release an agency from the custodial obligation for the maintenance, preservation, and disposition of the agency's records.**

**(2) agencies may wish to include a statement to the effect that the information provided on the website is for informational purposes and that the official copy of record(s) can be found at the agency. See subsection K of 1.15.2.9 NMAC of this rule for further information.**

**(3) because applicable statutes or laws may vary, agencies may wish to consult with legal counsel for applicable citations for websites conducting business transactions or containing confidential information.**

[1.15.2.306 NMAC - N, 1/5/2004]

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

This is an amendment to 1.15.3 NMAC, Sections 7, 9, and 306.

#### **1.15.3.7 DEFINITIONS:**

**A. "Administrator"** means the state records administrator (Section 14-3-2 NMSA 1978).

**B. "Agency"** means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2, NMSA 1978).

**C. "Audit"** means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.

**D. "Commission"** means the state commission of public records (Section 14-3-2 NMSA 1978).

**E. "Pending litigation"** means a proceeding in a court of law whose activity is in progress but not yet completed.

**F. "Records management"** means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

**G. "Records retention period"** means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

**H. "Records retention schedule"** means a document prepared as part of a records retention program that lists the period of time for retaining records.

**I. "Website"** means a presence on the internet or intranet containing information that represents an agency or presents information on specific subjects or allows transactions to be conducted through the use of links or webpages. A website is normally hosted and maintained by an agency or by another entity sharing internet resources or through an internet service provider.

[8-8-96; 5-19-97; 1.15.3.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 1/6/2002; A, 1/5/2004]

#### **1.15.3.9 INSTRUCTIONS:**

**A.** For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records, 1.15.3 NMAC.

**B.** For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, 1.15.5 NMAC.

**C.** For records of a personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records, 1.15.7 NMAC.

**D.** For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC.

**E.** Retention periods shall be extended until six months after all cur-

rent or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

**F.** The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

**G.** Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

**H.** Access to confidential documents or confidential files shall be only by authorization of agency or attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

**I.** All records, papers or documents may be photographed, micro-filmed, microphotographed or reproduced on film. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Section 14-1-5, 14-1-6 NMSA 1978).

**J.** Electronic records. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems).

**K.** An entity should not place an original or official copy of record on their website. An original or official copy of record is a public record, regardless of media, as defined by 14-2-6 NMSA 1978. A public record must be maintained for a specified amount of time and must go through the disposition process as stated in

the general or agency's records retention and disposition schedule. An entity should develop a plan for the management of the public records maintained on their website and integrate the plan into the entity's overall records management program. For further guidance see the New Mexico chief information officer's website for standards and guidelines for the creation and maintenance of a website.

[1.15.3.9 NMAC - Rn, 1 NMAC 3.2.90.8 & A, 1/6/2002; A, 1/5/2004]

#### **1.15.3.306 WEBSITE:**

**A. Program:** public relations

**B. Architecture:** The overall design of a website, which can encompass hardware and software, consisting of the how the components are designed, connected to, and operate with one another. The architectural design also contains information on the development and maintenance of informational or transactional websites that may contain documentation on the platform and associated software necessary to operate and maintain an internet or intranet presence.

**(1) informational website:** informational web sites contain information and do not support or conduct business transactions.

**(2) transactional website:** transactional web sites contain information and possess the ability to conduct business transactions.

**C. Description:** records and information hosted electronically and accessible through the internet or intranet. A website may contain information regarding the mission of an agency or the reason for the establishment of a web presence. The website may contain replicated information from an agency such as, names of staff, announcements of meetings, calendar of events, press releases, annual reports, strategic plans, surveys, images, multimedia, audio, transactional forms or pages (e-commerce), etc. The website may also contain unique information found only on the website.

#### **D. Retention:**

**(1) platform (software):** one year after discontinuance of the system.

#### **(2) web content:**

**(a) unique records or information:** see the general or agency program schedule for retention.

**(b) replicated information:** until superseded or no longer relevant.

#### **(3) web site structure:**

**(a) informational web site:** one year after site is updated or changed.

**(b) transactional web site:** three years after site is updated or changed. [Transactional web sites contain or support

transactions such as registrations, purchases, etc.]

#### **E. Nota bene:**

**(1)** the use of contractors or another entity to host an entity's website does not release the entity from the custodial obligation for the maintenance, preservation, and disposition of the entity's records.

**(2)** entities may wish to include a statement to the effect that the information provided on the website is for informational purposes and that the official copy of record(s) can be found at the entity. See subsection K of 1.15.3.9 NMAC of this rule for further information.

**(3)** because applicable statutes or laws may vary, entities may wish to consult with legal counsel for applicable citations for websites conducting business transactions or containing confidential information.

[1.15.3.306 NMAC - N, 1/5/2004]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.17.244 NMAC JRRDS, BERNALILLO COUNTY METROPOLITAN COURT, Sections 341, 342 and 343.

### 1.17.244.332 - 340 [RESERVED]

#### **1.17.244.341 MEDIATION CASE FILES:**

**A. Program:** mediation

**B. Maintenance system:** alphabetical by plaintiff surname. [File label identification consists of plaintiffs' names, mediation log number, and civil court case number.]

**C. Description:** records concerning lawsuits filed at Bernalillo metropolitan court where parties who are involved in the dispute opt to participate in mediation to find a solution that meets their needs. File may contain: mediation referral; signed agreement to mediate; intake sheet; scheduling and rescheduling letters (copies); case history notes; disposition (copy); mediator notes; correspondence; memoranda; etc.

**D. Retention:** five years after close of calendar year for which created. [Mediator notes are destroyed at the end of mediation.]

#### **E. Confidentiality:**

Portions of file may be confidential (i.e., phone numbers, case history notes).

[1.17.244.341 NMAC - N, 1/5/2004]

#### **1.17.244.342 MEDIATION CASE LOG:**

**A. Program:** mediation

**B. Maintenance system:** chrono-numerical by mediation log number [e.g., 03AUG904. The initial series of numbers indicates the year, then followed by the intake month. The number after the intake month indicates how many cases have come into the division for the year.]

**C. Description:** records used to track the status of mediation cases and used to create statistical reports. Log may show number of cases, number of mediations, case (mediation) outcome (disposition), case type (i.e., landlord and tenant, consumer, debt collection, neighbor to neighbor, etc.), assigned judge, assigned mediators, etc.

**D. Retention:** until corresponding 1.17.244.341 NMAC mediation case files destroyed  
[1.17.244.342 NMAC - N, 1/5/2004]

#### **1.17.244.343 MEDIATION STATISTICS REPORTS:**

**A. Program:** mediation

**B. Maintenance system:** chronological by date report created

**C. Description:** periodic reports that document the program activity of the mediation division and used to track mediation trends. Reports may show number of cases reviewed, number of case intakes, number of mediations, agreement rate, etc.

**D. Retention:**

**(1) annual calendar reports.** five years after close of calendar year for which created

**(2) annual fiscal reports.** five years after close of fiscal year for which created

**(3) monthly reports.** two years after corresponding annual report is released

[1.17.244.343 NMAC - N, 1/5/2004]

[The annual report contains cumulative information for the year. The information on the monthly reports can be different in that they track the status of a case for the particular month.]

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

December 4, 2003

Donald L. Padilla, Records Management  
Division Director  
NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87505

Mr. Padilla:

You recently requested to publish a synopsis

in lieu of publishing the full content of the following rule:

\* 1.18.770 NMAC ERRDS, NM Corrections Department, amendment.

A review of this rule shows that its impact is limited to the individual agency to which it pertains, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for this rule is approved.

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/dlp

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

### **SYNOPSIS**

#### **1.18.770 NMAC ERRDS, Corrections Department**

**1. Subject matter:** 1.18.770 NMAC, Executive Records Retention and Disposition Schedule for the Corrections Department. This rule is being amended 1.18.770 NMAC ERRDS, Corrections Department an outdated re-numbered version that was filed on 5/16/2001. This records retention and disposition schedule is a timetable for the management of specific records series of the Corrections Department. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Corrections Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Corrections Department. Persons and entities normally subject to the rules and regulations of the Corrections Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Corrections Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Corrections Department. Any person or entity outside the covered geographical area that conducts business with or through the Corrections Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** January 05, 2004.

### **Certification**

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.770 NMAC ERRDS, Corrections Department.

\_\_\_\_\_  
Roberta D. Joe Date  
Assistant Attorney General

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

This is an amendment to 1.18.924 NMAC, ERRDS, DEPARTMENT OF EDUCATION, Sections 2, 3, 6, 7, 8, 9, 473, 474 and 475.

**1.18.924.2 SCOPE:** [~~all state agencies executive~~] department of education  
[5-25-95; 1.18.924.2 NMAC - Rn, 1 NMAC 3.2.93.2, 10/01/2000; A, 01/05/2004]

**1.18.924.3 STATUTORY AUTHORITY:** [~~Section 14-3-6 NMSA 1978. Administrator duties. The administrator shall establish a record management program for the application of efficient and economical management methods of the creation, utilization, maintenance, retention,~~

preservation and disposal of official records. The administrator shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the public records act. Records disposal schedules shall be filed with the librarian of the supreme court library, and shall not become effective until thirty days after the filing date.] Section 14-3-1 NMSA 1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.

[5-25-95; 1.18.924.2 NMAC - Rn, 1 NMAC 3.2.93.3, 10/01/2000; A, 01/05/2004]

#### 1.18.924.6 OBJECTIVE:

**A.** To establish a records management program for the application of and efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of official records (Section 14-3-6 NMSA 1978).

**B.** To establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the public records act (Section 14-3-6 NMSA 1978). To establish a records retention schedule for the management and orderly retirement of records necessary for the carrying out the Public Records Act, Section 14-3-6 NMSA 1978.

[5-25-95; 1.18.924.6 NMAC - Rn, 1 NMAC 3.2.93.6, 10/01/2000; A, 01/05/2004]

#### 1.18.924.7 DEFINITIONS:

**A. Administrator:** "Administrator" means the state records administrator. (Section 14-3-2, NMSA 1978)

**B. Agency:** "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico. (Section 14-3-2, NMSA 1978)

**C. Audit:** A periodic examination of an organization to determine whether appropriate procedures and practices are followed.

**D. Commission:** "Commission" means the state commission of public records. (Section 14-3-2, NMSA 1978)

**E. Pending litigation:** A proceeding in a court of law whose activity is in progress but not yet completed.

**F. Record destruction:** The process of totally obliterating information on records by any method to make the

information unreadable or unusable under any circumstances.

**G. Records management:** The systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

**H. Records retention period:** The period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

**I. Records retention schedule:** A document prepared as part of a records retention program that lists the period of time for retaining records.

**J. Public records:** "Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. (Section 14-4-2, NMSA 1978)

**K. Non-records:** Library or museum material of the state library, state institutions and state museums, extra copies of documents reserved only for convenience of reference and stocks of publications and processed documents are non-records. (Section 14-3-2 C, NMSA 1978). The following specific types of materials are non-records: extra copies of correspondence; documents preserved only for convenience of reference; blank forms/books which are outdated; materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer/agency; preliminary and non final drafts of letters, reports and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of the agency, board, department or subdivision thereof is reached; shorthand notes, steno tapes, mechanical recordings which have been transcribed, except where noted on agency retention schedules; routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above; stocks of publications already sent to archives and processed documents preserved for supply purposes only; form and guide letters, sample letters, form paragraphs; subject files, including copies of correspondence, memoranda, publications,

reports and other information received by agency and filed by subject (also referred to as reading files or information files). (See also Item No. 1.15.2.101 of Records Retention and Disposition Schedule for General Administrative Records (1.15.2 NMAC filed 10/01/2000).]

[5-25-95; 5-19-97; 1.18.924.7 NMAC - Rn, 1 NMAC 3.2.93.7, 10/01/2000; A, 01/05/2004]

#### 1.18.924.8 ABBREVIATIONS AND ACRONYMS: [RESERVED]

[5-25-95; 5-19-97; 1.18.924.8 NMAC - Rn, 1 NMAC 3.2.93.8, 10/01/2000; 1.18.924.8 NMAC - N, 01/05/2004]

#### [1.18.924.8] 1.18.924.9 INSTRUCTIONS:

**A.** For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records, 1.15.2 NMAC.

**B.** For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, 1.15.4 NMAC.

**C.** For records of a personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records, 1.15.6 NMAC.

**D.** For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC.

**E.** Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

**F.** The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

**G.** [Confidentiality is denoted as "C". Not all materials in a file may be confidential. Refer to NOTE. Where portions of file may be confidential, refer to legal counsel for agency.

**H.** Access to confidential documents and confidential files shall be only by authorization of agency or attorney general and/or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

**I.** All records, papers or documents may be photographed, micro-filmed, microphotographed or reproduced on film. Such photographs, microfilms,

photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. (Section 14-1-5, 14-1-6 NMSA 1978)

**[¶] L.** Data processing and other machine readable records. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.70 NMAC: PERFORMANCE GUIDELINES FOR THE LEGAL ACCEPTANCE OF PUBLIC RECORDS PRODUCED BY INFORMATION TECHNOLOGY SYSTEMS).

[1.18.924.9 NMAC - Rn & A, 1.18.924.8 NMAC, 01/05/2004]

**1.18.924.473 PRUEBA DE ESPAÑOL PARA LA CERTIFICACIÓN BILINGÜE (SPANISH LANGUAGE PROFICIENCY EXAM):**

**A. Program:** multicultural education

**B. Maintenance system:** chronological by test date, then individual by social security number

**C. Description:** record concerning Spanish language proficiency exam for bilingual education endorsement of teachers. Record contains completed test booklet with answers and cassette tape recording of test.

**D. Retention:** two years after test date

**E. Confidentiality:** portions of this file may be confidential, (social security number), per Section 57-12B-3 NMSA 1978.

[1.18.924.473 NMAC - N, 01/05/2004]

[As of December 31, 2003 ENMU will start administering and maintaining the certification tests.]

**1.18.924.474 PRUEBA DE ESPAÑOL PARA LA CERTIFICACIÓN BILINGÜE SYSTEM:**

**A. Program:** multicultural education

**B. Maintenance system:** numerical by primary key

**C. Description:** systems tracks and maintains test results of Spanish language proficiency exam for bilingual education endorsement of teachers. Data

includes individual test dates, social security number, and test results, (pass or fail).

**D. Retention:** two years after test date

**E. Hardcopy input documents:** examinee test results and scores for the proficiency exam are entered into system from the graded test *prueba de español para la certificación bilingüe (Spanish language proficiency exam booklets.)*

**F. Hardcopy output documents:** no documents are generated from this system. It is maintained for informational use only.

**G. Confidentiality:** portions of this file may be confidential, (social security number), per Section 57-12B-3 NMSA 1978.

[1.18.924.474 NMAC - N, 01/05/2004]

**1.18.924.475 PRUEBA DE ESPAÑOL PARA LA CERTIFICACIÓN BILINGÜE TEST SCORE SHEET FILE:**

**A. Program:** multicultural education

**B. Maintenance system:** chronological by test date, then alphabetical by teacher name

**C. Description:** test scores for *prueba de español para la certificación bilingüe (Spanish language proficiency exam)*. Information on score sheet includes test dates, social security number, test results (pass or fail). File contains score sheet and letter informing the person of their pass or fail of exam.]

**D. Retention:** ten years from test date

**E. Confidentiality:** portions of this file may be confidential, (social security number), per Section 57-12B-3 NMSA 1978.

[1.18.924.475 NMAC - N, 01/05/2004]

**NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION**

**TITLE 13 INSURANCE CHAPTER 10 HEALTH INSURANCE PART 18 MINIMUM COVERAGE FOR TOBACCO CESSATION TREATMENT**

**13.10.18.1 ISSUING AGENCY:** New Mexico Public Regulation Commission, Insurance Division.

[13.10.18.1 NMAC - N, 3/1/04]

**13.10.18.2 SCOPE:** This rule applies to policies, plans, contracts and certificates that offer maternity benefits delivered or issued for delivery or renewed,

extended or amended pursuant to the New Mexico insurance code in this state by any person, insurer, health maintenance organization, fraternal benefit society, nonprofit health care plan, medical insurance pool or health insurance alliance transacting health insurance or providing health care services. [13.10.18.2 NMAC - N, 3/1/04]

**13.10.18.3 STATUTORY AUTHORITY:** 59A-2-9.4, 59A-22-44, 59A-23-4, 59A-23B-3, 59A-46-45 and 59A-47-33 NMSA 1978.

[13.10.18.3 NMAC - N, 3/1/04]

**13.10.18.4 DURATION:** Permanent.

[13.10.18.4 NMAC - N, 3/1/04]

**13.10.18.5 EFFECTIVE DATE:** March 1, 2004 unless a later date is cited at the end of a section.

[13.10.18.5 NMAC - N, 3/1/04]

**13.10.18.6 OBJECTIVE:** The objective of this rule is to define minimum coverage for tobacco cessation treatment.

[13.10.18.6 NMAC - N, 3/1/04]

**13.10.18.7 DEFINITIONS:**

**A.** The following terms have the meanings given in the cited article or section of the New Mexico Statutes Annotated 1978:

(1) Fraternal Benefit Society, Section 59A-44-1 NMSA 1978;

(2) Health Insurance Alliance, Section 59A-56-3 NMSA 1978;

(3) Health Maintenance Organization, Section 59A-46-2 NMSA 1978;

(4) Insurer, Section 59A-1-8 NMSA 1978;

(5) Insurance Code, Section 59A-1-1 NMSA 1978;

(6) Nonprofit Health Care Plan, Chapter 59A, Article 47 NMSA 1978;

(7) New Mexico Medical Insurance Pool, Chapter 59A, Article 54 NMSA 1978.

**B.** The following terms have the meanings given here.

(1) **Maternity benefits** means coverage for prenatal, intrapartum, perinatal or postpartum care.

(2) **Pharmacotherapy** means intervention with United States food and drug administration approved first-line drugs available by prescription only to assist cessation of tobacco use or smoking.

(3) **Tobacco** means cigarettes (including roll-your own or handmade cigarettes), bidis, kreteks, cigars (including little cigars, cigarillos, regular cigars, premium cigars, cheroots, chuttas, and dhunti), pipe, smokeless tobacco (including snuff, chew-

ing tobacco and beetle nut), and novel tobacco products, such as *eclipse*, *accord* or other low-smoke cigarettes.

(4) **Cessation counseling** means a program, including individual, group, or proactive telephone quit line, that:

(a) is designed to build positive behavior change practices and provides counseling at a minimum on establishment of reasons for quitting tobacco use, understanding nicotine addiction, various techniques for quitting tobacco use and remaining tobacco free, discussion of stages of change, overcoming the problems of quitting, including withdrawal symptoms, short-term goal setting, setting a quit date, relapse prevention information and follow-up;

(b) operates under a written program outline, that at a minimum includes an overview of service, service objectives and key topics covered, general teaching/learning strategies, clearly stated methods of assessing participant success, description of audio or visual materials that will be used, distribution plan for patient education materials and method for verifying enrollee attendance;

(c) employs counselors who have formal training and experience in tobacco cessation programming and are active in relevant continuing education activities; and

(d) uses a formal evaluation process, including mechanisms for data collection and measuring participant rate and impact of the program.

[13.10.18.7 NMAC - N, 3/1/04]

#### 13.10.18.8 REQUIRED MINIMUM COVERAGE FOR TOBACCO CESSATION TREATMENT:

A. All policies, plans, contracts and certificates that offer maternity benefits shall include at least the following tobacco cessation treatment benefits, which may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same policy, plan, contract or certificate.

(1) **Diagnostic services:** Diagnostic services necessary to identify tobacco use, use-related conditions and dependence.

(2) **Pharmacotherapy:** Two 90-day courses of pharmacotherapy per calendar year.

(3) **Cessation counseling:** A choice of cessation counseling of up to 90 minutes total provider contact time or two multi-session group programs per calendar year.

B. Initiation of any course of pharmacotherapy or cessation counseling shall constitute an entire course of pharmacotherapy or cessation counseling even if an

individual discontinues or fails to complete the course.

[13.10.18.8 NMAC - N, 3/1/04]

#### HISTORY OF 13.10.18 NMAC: [RESERVED]

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

#### TITLE 13 INSURANCE CHAPTER 10 HEALTH INSURANCE PART 19 PRESCRIPTION DRUG INFORMATION CARDS

13.10.19.1 ISSUING AGENCY: Public Regulation Commission, Insurance Division.  
[13.10.19.1 NMAC - N, 12-30-03]

13.10.19.2 SCOPE:  
A. **Applicability.** This rule applies to all health care insurers that provide, offer, or administer health benefit plans in New Mexico, except as otherwise provided in the act.

B. **Conflicts.** For purposes of this rule, if any provision of this rule conflicts with any provision in 13.10.13 NMAC, Managed Health Care, the provisions of this rule shall apply.  
[13.10.19.2 NMAC - N, 12-30-03]

13.10.19.3 STATUTORY AUTHORITY: NMSA 1978 Section 59A-59-1 et seq.  
[13.10.19.3 NMAC - N, 12-30-03]

13.10.19.4 DURATION: Permanent.  
[13.10.19.4 NMAC - N, 12-30-03]

13.10.19.5 EFFECTIVE DATE: December 30, 2003, unless a later date is cited at the end of a section.  
[13.10.19.5 NMAC - N, 12-30-03]

13.10.19.6 OBJECTIVE: The purpose of this rule is to implement the Prescription Drug Uniform Information Card Act.  
[13.10.19.6 NMAC - N, 12-30-03]

13.10.19.7 DEFINITIONS: Act means the Prescription Drug Uniform Information Card Act, NMSA 1978 Sections 59A-59-1 et seq.  
[13.10.19.7 NMAC - N, 12-30-03]

13.10.19.8 CONTENT AND FORMAT:  
A. **Format.** Prescription

drug identification cards shall be printed in Times New Roman, font size 8. The information on the front of the card shall be left justified; the information on the back of the card shall be centered at the bottom of the card.

B. **Additional information.** A health care insurer may add other information to a prescription drug identification card as long as the additional information does not reduce the readability of the required information.

C. **Prior approval required.** A health care insurer shall submit to the superintendent by March 1, 2004 a schematic showing the contents and format of both sides of the card it proposes to use. A health care insurer shall not issue prescription drug information cards, or cards for health insurance coverage that includes prescription drug coverage, until the superintendent approves the contents and format of the card.  
[13.10.19.8 NMAC - N, 12-30-03]

#### 13.10.19.9 IMPLEMENTATION:

A. **Plan required.** A health care insurer shall submit to the superintendent by March 1, 2004 an implementation plan detailing how and when the health care insurer will meet the requirements of the act and this rule. At a minimum, the plan shall indicate when the health care insurer plans to finalize the design of the card, when the health care insurer plans to commence issuing approved cards, and how the health care insurer plans to have all necessary cards issued by July 1, 2005.

B. **Timeframe.** A health care insurer shall issue prescription drug information cards that meet the requirements of the act and this rule with new policies or renewed policies issued after the superintendent has approved the content and format of the card, or as requested by the cardholder, but no later than July 1, 2005.  
[13.10.19.9 NMAC - N, 12-30-03]

13.10.19.10 PENALTIES FOR NONCOMPLIANCE: The superintendent may impose penalties in accordance with NMSA 1978 Section 59A-1-18 for failure to comply with the requirements of the act and this rule.  
[13.10.19.10 NMAC - N, 12-30-03]

#### HISTORY OF 13.10.19 NMAC: [RESERVED]



**NEW MEXICO  
DEPARTMENT OF  
PUBLIC SAFETY**  
TRAINING AND RECRUITING  
DIVISION  
Law Enforcement Academy

This is an amendment to 10.29.1 NMAC, Sections 10, 11, 12, 13, 16 and 18, effective January 1, 2004.

**10.29.1.10 QUALIFICATIONS FOR ADMISSION TO THE ACADEMY**

**A. Qualifications for police officer admission** - In accordance with those qualifications enumerated under NMSA 1978, Section 29-7-6 (Repl. Pamp. 1994), the director shall reject applicants for admission to the academy if, after investigation, it is determined that the applicant does not meet the following criteria:

(1) citizenship and age requirements as set forth in NMSA 1978, Section 29-7-6 (Repl. Pamp. 1994);  
(2) holds a high school diploma or its equivalent;

(3) holds a valid drivers license;

(4) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge, or within the three year period immediately preceding his/her application, to any violation of any federal law or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;  
(5) is found, after examination by a licensed physician, to be free from any physical condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act;

(6) is found, after examination by a certified psychologist, to be free of any emotional or mental condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act;

(7) is found to be of good moral character and has not committed any acts constituting dishonesty or fraud; and

(8) is found not to have committed any other acts which would be grounds for denial, revocation, or suspension of certification under the provision of 10.29.1.11 NMAC.

**B. Qualifications for telecommunicator admission** - In accor-

dance with those qualifications enumerated under NMSA 1978, Section 29-7C-3, the director shall reject applicants for admission to the academy if, after investigation, it is determined that the applicant does not meet the following criteria:

(1) United States citizenship or legal resident and age requirements as set forth in NMSA 1978, Section 29-7C-3;

(2) holds a high school diploma or its equivalent from an accredited institution;

(3) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge, or within the three year period immediately preceding his/her application, to any violation of any federal law or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;

(4) is found to be of good moral character and has not committed any acts constituting dishonesty or fraud; and

(5) is found not to have committed any other acts which would be grounds for denial, revocation, or suspension of certification under the provision of 10.29.1.11 NMAC; and

(6) has been examined by a certified technician and have no uncorrected hearing loss in either ear of greater than 25db at 500, 1000, 2000 Hz, and no more than a 20db loss in the better ear by audiometry, using ANSI (1969) standards.

**[B-] C. Status** - Applicants shall be appraised by the director of the status of their application and any deficiencies therein, in writing, as soon as possible. If an applicant is denied admission, the written notification shall include an explanation of the specific facts and circumstances upon which the decision is based. Decisions of the director may be appealed to the board. The appeals procedures provided for in 10.29.1.13 NMAC through 10.29.1.15 NMAC shall be utilized in the event an appeal is filed under this section.

[4-15-93, 10-1-97, 1-1-99; 10.29.1.10 NMAC - Rn, 10 NMAC 29.1.10, 7/1/01; A, 01/01/04]

**10.29.1.11 GROUNDS FOR DENIAL, REVOCATION OR SUSPENSION OF POLICE OFFICER OR TELECOMMUNICATOR CERTIFICATION; REPORTING REQUIREMENTS**

**A. Authority** - In accordance with the provisions of the Law Enforcement Training Act, NMSA 1978, Section 29-7-13 (Repl. Pamp. 1994), the director may seek to deny, suspend or revoke a police officer's certification, if after investigation, and consultation with

the employing agency, it is determined that a police officer has failed to comply with the provisions of the Law Enforcement Training Act concerning qualifications for certification as a police officer in the state of New Mexico.

**B. Grounds for police officer** - The following conduct by a certified police officer may constitute grounds for denial, suspension or revocation of certification under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects an officers ability to exercise his or her duties as a certified law enforcement officer; and

(5) committing acts of violence or brutality which indicate that the officer has abused the authority granted to him or her as a commissioned law enforcement officer in the state of New Mexico.

(6) is found to have committed acts which would be grounds for denial of application for admission under 10.29.1.10 NMAC.

**C. Grounds for telecommunicator** - The following conduct by a certified telecommunicator may constitute grounds for denial, suspension or revocation of certification under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects a telecommunicator's ability to exercise his or her duties as a certified telecommunicator; and

(5) committing acts which indi-

cate that the telecommunicator has abused the authority granted to him or her as a certified telecommunicator in the state of New Mexico.

(6) is found to have committed acts which would be grounds for denial of application for admission under 10.29.1.10 NMAC.

**[C-] D. Reports** - Any agency employing a certified law enforcement officer or telecommunicator who has committed any act or acts identified in Subsection B or C of 10.29.1.11 NMAC shall report such conduct to the director within thirty (30) days. The director will establish a reporting form to be completed by the agency. An agency's delay or failure to report such conduct does not divest the board of jurisdiction to take action under NMSA 1978, Section 29-7-13 and NMSA 1978 Section 29-7C-9.

[4-11-93, 10-1-97, 1-1-99; 10.29.1.11 NMAC - Rn, 10 NMAC 29.1.11, 7/1/01; A, 01/01/04]

#### **10.29.1.12 PROCEDURES FOR DENIAL, SUSPENSION OR REVOCATION OF POLICE OFFICER OR TELECOMMUNICATOR CERTIFICATION**

**A. Procedures** - In those instances where the director contemplates taking any action to deny, revoke, or suspend a police officer's or telecommunicator certification under 10.29.1.11 NMAC, the affected individual shall be served with notice of the proposed action to be taken. Such notice shall contain:

(1) a concise statement of what the contemplated action is;

(2) a description of the acts for which the denial, suspension, or revocation is sought;

(3) a general explanation of the evidence the director has; and

(4) a statement that the affected individual has seven (7) calendar days from receipt of the notice to respond in writing to the notice or to request an opportunity for oral response.

#### **B. Response**

(1) If a request for an oral response to the notice of contemplated action is made, the director shall meet with the police officer or telecommunicator within fourteen (14) calendar days of receipt of such request unless the parties agree to an extension.

(2) A police officer or telecommunicator served with a notice of contemplated action pursuant to this section may choose a representative to respond orally or in writing on his or her behalf.

**C. Notice** - The director shall serve the affected officer or telecommunicator with a written notice of final

decision no later than forty-five (45) calendar days after service of the notice of contemplated action. The notice of final decision shall contain:

(1) a declaration of the final position to be taken by the director before the academy board;

(2) a statement of acts which the director believes justifies denial, revocation or suspension of the [police officer's] certification;

(3) a general explanation of the evidence in the possession of the director; and

(4) notice to the police officer or telecommunicator that the director's final decision is to be presented before the law enforcement academy board in accordance with those procedures set forth in 10.29.1.13 NMAC.

[4-11-93, 10-1-97; 10.29.1.12 NMAC - Rn, 10 NMAC 29.1.12, 7/1/01; A, 01/01/04]

#### **10.29.1.13 PROCEEDINGS FOR DENIAL, REVOCATION, OR SUSPENSION BEFORE THE LAW ENFORCEMENT ACADEMY BOARD; PROCEDURE**

**A.** All actions contemplated by the director to deny, suspend or revoke a police officer's or telecommunicator's certification shall be brought before the law enforcement academy. The officer or telecommunicator may secure a hearing before the board if the board receives within thirty (30) calendar days from the receipt of the director's notice of final decision, a request for hearing. Such request shall be made in writing and shall be addressed to the board. The request may be either personally served upon the director on behalf of the board or sent by registered letter to the New Mexico law enforcement academy. If the police officer or telecommunicator does not mail a request for hearing within the time and in the manner required by this rule, the board may take the action contemplated by the director and such action shall be considered final.

**B.** The board may appoint a hearing officer to receive testimony and make recommendations therein to the board.

**C.** Neither an appointed hearing officer nor any member of the board shall participate in any adjudicatory proceeding if, for any reason, the hearing officer or board member cannot afford a fair and impartial hearing to the parties.

**D.** Either of the parties may seek to disqualify the designated hearing officer or particular board members from hearing the appeal if within ten (10) calendar days of receipt of the scheduling order required by Paragraph 10 of Subsection A of 10.29.1.13 NMAC below,

an affidavit of disqualification is filed with the board, which states with particularity the specific reasons for refusal.

**E.** The board or designated hearing officer shall rule on motions of disqualification and no interlocutory appeal of the decision shall be permitted.

**F.** Parties are not to discuss the merits of any pending adjudicatory proceeding with members of the board or a designated hearing officer unless both parties or their respective representatives are present.

**G.** The police officer or telecommunicator, within ten (10) calendar days after filing the request for hearing, shall file with the board a concise statement of the issues upon which he or she wishes to be heard and a concise statement setting forth the factual ground and authorities upon which the officer relies.

**H.** Within ten (10) calendar days after the filing of the police officer's or telecommunicator's statement and brief the director shall file an answer with the board, stating the justification for his decision and any authorities in support therein.

**I.** Pre-hearing motions shall not be accepted by the board or designated hearing officer. The parties may engage in discovery limited to interrogatories, requests for production, and requests for admission.

**J.** Within twenty (20) calendar days of receipt of the statements and briefs, the board or designated hearing officer shall issue to the parties a scheduling order establishing deadlines for completion of discovery and a hearing date. Hearings shall be conducted within ninety (90) calendar days of the date of filing of the request for hearing.

**K.** The parties shall file a list of witnesses and a brief description of their testimony and all exhibits to be introduced at the hearing with the board or the designated hearing officer at least ten (10) calendar days in advance of the designated hearing date.

**L.** Extensions of time shall be granted in the discretion of the hearing officer or the board.

[4-11-93, 7-29-93, 10-1-97, 1-1-99; 10.29.1.13 NMAC - Rn, 10 NMAC 29.1.13, 7/1/01; A, 01/01/04]

#### **10.29.1.16 METHOD OF SERVICE NOTICE; PROCEDURES**

**A.** Any notice required by board rule 10.29.1.15 NMAC may be served upon the police officer or telecommunicator at his or her last known address, either by hand delivery by an officer authorized by law to serve process or by certified mail with return receipt requested.

**B.** Service of notice is complete when the notice is:

- (1) hand delivered; or
  - (2) deposited with the United States postal service by certified mail with return receipt requested, properly stamped and addressed to the last address provided by the officer.
- [4-11-93, 10-1-97; 10.29.1.16 NMAC - Rn, 10 NMAC 29.1.16, 7/1/01; A, 01/01/04]

#### **10.29.1.18 P A R E N T A L RESPONSIBILITY ACT COMPLIANCE**

**A. Disciplinary action** - If an applicant, [☒] certified police officer or certified telecommunicator is not in compliance with a judgment and order for support, the law enforcement academy board:

- (1) shall deny an application for certification;
- (2) has grounds for suspension or revocation of a police officer's or telecommunicator's certification.

**B. Certified list** - Upon receipt of human services division's certified list of obligors not in compliance with a judgment and order for support, the law enforcement academy board shall match the certified list against the current list of certified police officers, and certified telecommunicators and applicants for certification. Upon the later receipt of an application for certification, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to human services division the names of board applicants, [and] certified police officers and certified telecommunicators who are on the certified list and the action the board has taken in connections with such applicants and licensees.

**C. Initial action** - Upon determination that an applicant, [☒] certified police officer or telecommunicator appears on the certified list, the board shall:

- (1) commence a formal proceeding under Subsection D of 10.29.1.18 NMAC to take the appropriate action under Subsection A of 10.29.1.18 NMAC, [or]
- (2) for current certified peace officers or certified telecommunicators only, informally notify the police officer or telecommunicator that his/her name is on the certified list, and that the licensee must provide the director with a subsequent statement of compliance from HSD within thirty (30) days of receipt of the notice from the director. If the certified police officer or certified telecommunicator fails to provide this statement, the director shall commence a formal proceeding under Subsection D of 10.29.1.18 NMAC.

**D. Notice of final decision** - Prior to taking any action specified in

Subsection A of 10.29.1.18, the director shall serve upon the applicant, [☒] certified police officer or certified telecommunicator a written notice stating that:

(1) the director has grounds to bring such an action before the law enforcement academy board, and that the director shall take such action unless the applicant, [☒] certified police officer or certified telecommunicator:

(a) mails a letter (certified mail return receipt requested) within thirty (30) days after service of the notice requesting a hearing; or

(b) provides the director, within thirty (30) days of the date of the notice, with a statement of compliance from HSD; and

(2) if the applicant, [☒] certified police officer or certified telecommunicator disagrees with the determination of non-compliance, or wishes to come into compliance the applicant, [☒] certified police officer or certified telecommunicator should contact the HSD child support enforcement division.

**E. Evidence and proof** - In any hearing under this section, relevant evidence is limited to the following:

(1) a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action contemplated under Subsection A of 10.29.1.18 NMAC, unless;

(2) the applicant, [☒] certified police officer or certified telecommunicator provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this section.

**F. Order** - When a disciplinary action is taken under this section solely because the applicant, [☒] certified police officer or certified telecommunicator is not in compliance with a judgment and order for support, the order shall state that the application or certification shall be reinstated upon presentation of a subsequent state of compliance.

**G. Procedures** - Proceedings under this section shall be governed by the provision of NMSA 1978, Section 29-7-13B (Repl. Pamp. 1994) and 10.29.1.14 NMAC.

[12-7-95, 10-1-97; 10.29.1.18 NMAC - Rn, 10 NMAC 29.1.18, 7/1/01; A, 01/01/04]

**NEW MEXICO  
DEPARTMENT OF  
PUBLIC SAFETY  
TRAINING AND RECRUITING  
DIVISION  
Law Enforcement Academy**

This is an amendment to 10.29.6 NMAC,

Sections 6, 8, 9, 11 and 12, effective January 1, 2004.

**10.29.6.6 OBJECTIVE:** The purpose of part 6 is to establish training requirements and eligibility standards for police officers and telecommunicators who seek certification by waiver of basic training under NMSA 1978, Section 29-7-10 (Repl. Pamp. 1994), NMSA 1978 Section 29-7C-6.

[10-1-97; 10.29.6.6 NMAC - Rn, 10 NMAC 29.6.6, 7/1/01; A, 01/01/04]

#### **10.29.6.8 REQUIREMENTS FOR POLICE OFFICERS:**

**A.** In order to be eligible for certification by waiver of basic training, such applicants shall be required to successfully complete an 120-hour certification by waiver of previous training program in order to demonstrate proficiency. The training will include the following topics: state laws; constitutional law; firearms training and testing; defensive tactics training and testing; use of force training; patrol tactics training and testing; emergency vehicles operations training and testing; and critical incident management training. All applicants must successfully challenge or complete a law enforcement Spanish class. The 1.5 mile run and the 300 meter run fitness tests must be completed at the 50th percentile or better. Agility course 1 and agility course 2 must be completed in the time required for graduation from the basic training program. If the applicant chooses, he or she may drag a rigid aid or object 10 feet from the side of the wall and use it as a platform to scale the wall. The rigid aid or object will have handles, a flat top, weigh 50 lbs. and be 25" tall. The law enforcement officer certification examination will be administered at the end of the training program. The applicant will have two (2) opportunities to successfully pass the exam. Two (2) failures of the exam will require the applicant to attend the basic police officer training program.

**B.** For the purposes of certification by waiver of previous training, pursuant to NMSA 1978, Section 29-7-10 (Repl. Pamp. 1997), the academy board has adopted the following formula to be applied to individuals who have not completed a comparable basic training program: applicants will be given credit for previous certified law enforcement experience at the rate of 40 hours per year for each year of service, up to but not to exceed ten (10) years, for a total of 400 hours, and the applicant will receive credit for advanced training, up to but not to exceed 400 hours. Applicant experience and training must be equivalent to the current minimum standards of training curriculum in effect at the time of appli-

cation, unless such deficiencies are covered in the certification by waiver program.

[11-25-89, 1-30-93, 10-1-97, 1-1-98, 1-1-99, 6-1-99, 12-31-99; 10.29.6.8 NMAC - Rn, 10 NMAC 29.6.8, 7/1/01; A, 01/01/04]

#### **10.29.6.9 ELIGIBILITY OF OUT-OF-STATE POLICE OFFICER APPLICANTS:**

**A.** In the event a certified officer from another state or duly commissioned officer from a federal agency makes application for certification in the state of New Mexico they must meet all qualifications and requirements as determined by the director.

**B.** Any applicant who has not been employed as a full-time law enforcement officer for a period in excess of eight (8) years must attend the basic police officer training program to become certified.

**C.** Any applicant who has successfully completed an accredited law enforcement academy from another state, but has never been certified, must secure a law enforcement position with a recognized New Mexico law enforcement agency within three (3) years of academy completion and must meet all other qualifications and requirements as determined by the director to be eligible for certification by waiver. [1-30-93, 10-1-97, 12-20-99; 10.29.6.9 NMAC - Rn, 10 NMAC 29.6.9, 7/1/01; A, 01/01/04]

#### **10.29.6.11 REQUIREMENTS FOR PUBLIC SAFETY TELECOMMUNICATOR**

**A.** In order to be eligible for certification by waiver of basic training, such applicants shall be required to successfully complete a certification by waiver of previous training program in order to demonstrate proficiency. The training will include the following topics: human relations; civil law; criminal law; domestic violence; NCIC – NMLETS and critical incident management training. The public safety telecommunicator certification examination will be administered at the end of the training program. The applicant will have two (2) opportunities to successfully pass the exam. Two (2) failures of the exam will require the applicant to attend the basic public safety telecommunicator training program.

**B.** For the purposes of certification by waiver of previous training, pursuant to NMSA 1978, Section 29-7C-6, the academy board has adopted the following formula to be applied to individuals who have not completed a comparable basic training program: applicants will be given credit for previous public safety telecommunicator experience at the rate of 24 hours

per year for each year of service, up to but not to exceed five (5) years, for a total of 120 hours, and the applicant will receive credit for advanced training, up to but not to exceed 120 hours. Applicant experience and training must be equivalent to the current minimum standards of training curriculum in effect at the time of application, unless such deficiencies are covered in the certification by waiver program.

[10.29.6.11 NMAC - N, 01/01/04]

#### **10.29.6.12 ELIGIBILITY OF OUT-OF-STATE PUBLIC SAFETY TELECOMMUNICATOR APPLICANTS**

**A.** In the event a certified telecommunicator from another state or a telecommunicator from a federal agency makes application for certification in the state of New Mexico they must meet all qualifications and requirements as determined by the director.

**B.** Any applicant who has not been employed as a certified telecommunicator for a period in excess of eight (8) years must attend the basic public safety telecommunicator training program to become certified.

**C.** Any applicant who has successfully completed an accredited law enforcement academy from another state, but has never been certified, must secure a telecommunicator position with a New Mexico public safety agency within three (3) years of academy completion and must meet all other qualifications and requirements as determined by the director to be eligible for certification by waiver.

[10.29.6.12 NMAC - N, 01/01/04]

### **NEW MEXICO DEPARTMENT OF PUBLIC SAFETY TRAINING AND RECRUITING DIVISION**

Law Enforcement Academy

This is an amendment to 10.29.7 NMAC, Sections 6, 8 and 9, effective January 1, 2004.

**10.29.7.6 OBJECTIVE:** The purpose of part 7 is to establish in-service law enforcement training requirements for certified police officers and certified public safety telecommunicators. [10-1-97; 10.29.7.6 NMAC - Rn, 10 NMAC 29.7.6, 7/1/01; A, 01/01/04]

#### **10.29.7.8 2002 - 2003 TRAINING CYCLE FOR LAW ENFORCEMENT OFFICERS**

**A.** Twelve (12) hours of maintenance training/education may apply

towards the 40-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. Firearms, first aid, defensive tactics, driving, and DWI measuring devices are examples of areas where periodic maintenance is measured and/or tested.

**B.** A minimum of twenty (20) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the law enforcement officer. Any accredited advanced, specialized, departmental in-service, college, or video training would qualify.

**C.** A minimum of eight (8) hours are required from one or any combination of the following subjects: cultural awareness, stress/anger management, domestic violence, critical incident response, ethics, legal update, and alternative force.

**D.** Required training may be received through the following means.

(1) The advanced training bureau will contract for course instruction at the regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) The curriculum will be developed by the training and recruiting division and provided to individual agencies for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.

(4) The training and recruiting division will produce instructional video tapes which can be loaned to agencies. Agency instructors will facilitate the training using the same guidelines for other video training. Facilitator guidelines and exams would accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

**E.** This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

**F.** Implementation is to begin on January 1, 2002. This two-year period consists of the twelve (12) hours of maintenance training required in Subsection A of 10.29.7.8 NMAC, the twenty (20)

hours of advanced training required in Subsection B of 10.29.7.8 NMAC, and the eight (8) hours of training required in Subsection C of 10.29.7.8 NMAC.

**G.** Officers obtaining certification between January 1, 2002 and December 31, 2002, will be required to obtain one-half of the in-service training requirement. Officers obtaining certification between January 1, 2003, and December 31, 2003, will be required to meet the next two-year requirement which will go into effect on January 1, 2004. This policy will apply in subsequent two-year cycles. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[1-30-93, 12-15-93, 1-17-94, 12-7-95, 10-1-97, 1-1-98, 1-1-2000; 10.29.7.8 NMAC - Rn, 10 NMAC 29.7.8, 7/1/01; A, 1/1/02; A, 6/14/02; A, 01/01/04]

#### **10.29.7.9 2004 - 2005 TRAINING CYCLE FOR TELECOMMUNICATORS**

**A.** Eight (8) hours of maintenance training/education may apply towards the 20-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. NCIC-NMLETs, CPR, call handling, emergency medical dispatching are examples of areas where periodic maintenance is measured and/or tested.

**B.** A minimum of eight (8) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the telecommunicator. Any accredited advanced, specialized, departmental in-service, college, or video training would qualify.

**C.** A minimum of four (4) hours are required from one or any combination of the following subjects: cultural awareness, stress/anger management, domestic violence, critical incident response, ethics, suicide call handling, violence in the work place and legal update.

**D.** Required training may be received through the following means.

(1) The advanced training bureau will contract for course instruction at the regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) The curriculum will be developed by the training and recruiting division and provided to individual agencies for their own certified instructors to present to their telecommunicators, provided the instructor

is qualified in the subject matter.

(4) The training and recruiting division will produce instructional video tapes which can be loaned to agencies. Agency instructors will facilitate the training using the same guidelines for other video training. Facilitator guidelines and exams would accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

**E.** This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon telecommunicators and the opportunity to have statewide consistency in certain critical areas.

**E.** Implementation is to begin on January 1, 2004. This two-year period consists of the eight (8) hours of maintenance training required in Subsection A of 10.29.7.9 NMAC, the eight (8) hours of advanced training required in Subsection B of 10.29.7.9 NMAC, and the four (4) hours of training required in Subsection C of 10.29.7.9 NMAC.

**G.** Telecommunicators obtaining certification between January 1, 2004 and December 31, 2004, will be required to obtain one-half of the in-service training requirement. Telecommunicators obtaining certification between January 1, 2005, and December 31, 2005, will be required to meet the next two-year requirement which will go into effect on January 1, 2006. This policy will apply in subsequent two-year cycles. Telecommunicators transferring from one agency to another will carry with them the responsibility for in-service training.

[10.29.7.9 NMAC - N, 01/01/04]

### **NEW MEXICO DEPARTMENT OF PUBLIC SAFETY TRAINING AND RECRUITING DIVISION Law Enforcement Academy**

This is an amendment to 10.29.10 NMAC, Sections 2, 8 and 9-15, effective January 1, 2004.

#### **PART 10 ~~[POLICE — RADIO DISPATCHER]~~ PUBLIC SAFETY TELECOMMUNICATOR MINIMUM STANDARDS OF TRAINING**

**10.29.10.2 SCOPE:** ~~[All applicants for certification as a police radio dispatcher under the Police Radio Dispatcher~~

~~Training Act]~~ All applicants for certification as a public safety telecommunicator under the Public Safety Telecommunicator Training Act. The provisions of the Public Safety Telecommunicator Training Act do not apply to the emergency medical dispatchers certified or licensed by the New Mexico department of health pursuant to the EMS Act, Section 24-10B-4.F., NMSA 1978 when only dispatching emergency medical services

[10-1-97; 10.29.10.2 NMAC - Rn, 10 NMAC 29.10.2, 7/1/01; A, 01/01/04]

#### **10.29.10.8 MINIMUM STANDARDS: ~~[POLICE RADIO DISPATCHER]~~ PUBLIC SAFETY TELECOMMUNICATORS, EMERGENCY COMMUNICATORS AND ~~[DISPATCHER]~~ TELECOMMUNICATOR TRAINING**

**A. Block 1: National crime information center and New Mexico law enforcement telecommunications system;** 32 total block hours - This unit of instruction will explain and apply situations, policies and procedures, which govern use of national crime information center and New Mexico law enforcement telecommunications systems. This unit of instruction will also present and identify limits in the use of national crime information center and New Mexico law enforcement telecommunications systems information.

**B. Block 2: Introduction to New Mexico telecommunications;** 13 total block hours - This unit of instruction identifies the core background, principals and exceptions of being a public safety telecommunicator in New Mexico.

(1) role of the public safety telecommunicator; 2 hours

(2) interpersonal communications; 4 hours

(3) officer safety; 2 hours

(4) ethics; 2 hours

(5) stress management; 3 hours

**C. Block 3: Call handling process and procedures;** 19 total block hours - This unit of instruction will provide the student with an understanding of the elements of effective telephone/call handling communication.

(1) enhanced 911 systems; 1 hour

(2) call handling; 4 hours

(3) TDD; 2 hours

(4) medical call handling; 2 hours

(5) resources; 6 hours

(6) domestic violence; 4 hours

**D. Block 4: Principals of law and the legal process;** 12 total block hours - This unit of instruction will inform the student about law and its application to the functions of law enforcement system. This unit will also instruct the student in civil liability.

- (1) civil law; 6 hours
- (2) criminal law; 6 hours

**E. Block 5: Radio technology and guidelines;** 4 total block hours - This unit of instruction will inform the students of basic radio concepts, federal communications center requirements and existing/new technology.

- (1) radio techniques; 3 hours
- (2) computer aided dispatch; 1 hour

**F. Block 6: Scene management;** 13 total block hours - This unit of instruction will prepare the telecommunicator to effectively assist in the management high-risk incidents to a safe and successful conclusion.

- (1) fire dispatch; 1 hour
- (2) haz-mat; 2 hours
- (3) critical incident management overview; 4 hours
- (4) critical incident stress debriefing; 1 hour
- (5) dealing with death and dying; 1 hour

(6) suicide and hostage/kidnap incidents; 4 hours

**G. Block 7: Human relations;** 5.5 total block hours - This unit of instruction will provide the student with tools and techniques to be aware of persons not familiar with the public safety system, so they can be more effective in their duties.

- (1) cultural diversity; 1.5 hours
- (2) gang awareness; 2 hours
- (3) community policing; 2 hours

**H. Block 8: Practical application activities;** 12 total block hours - This unit is to allow the student to apply job-related communications skills, tasks and knowledge in a simulated working environment.

**I. Block 9: Academy administration;** 7.5 total block hours - This unit is for administration of the basic public safety telecommunicator training program. This includes examinations and reviews, discretionary training time and graduations.

**J. Block 10:** [Reserved]

**K. Block 11: Emergency medical dispatch (optional);** 24 total block hours.

- (1) emergency medical dispatch; 24 hours
- (2) [Reserved]

[5-24-81...3-16-95; 10-1-97; 10.29.10.8 NMAC - Rn & A, 10 NMAC 29.9.10.8, 7/1/01; A, 01/01/04]

#### 10.29.10.9 ~~[POLICE RADIO DISPATCHER CERTIFICATION EXAMINATION; TIME LIMITATIONS~~

**A.** Students who successfully complete a New Mexico law enforcement academy police radio dispatch program will be allowed to take the police

~~radio dispatcher certification examination. Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director of the department of public safety training and recruiting division, will be administered the police radio dispatcher certification examination.~~

~~**B.** Students will be allowed two (2) opportunities in which to pass the police radio dispatcher certification examination within one year from the date of completion of a New Mexico law enforcement academy police radio dispatch program. Students who fail the test two (2) times will be required to re-enroll and successfully complete the New Mexico law enforcement academy's police radio dispatch training program. Students will not be allowed to attend a regional/satellite program.~~

~~**C.** Students who achieve a passing score on the police radio dispatcher certification examination will be allowed one year from the date of the test in which to be eligible for certification. Certification can be granted only when the eligible student is hired by a recognized New Mexico law enforcement agency in a dispatcher position.~~

~~**D.** If a student secures a police dispatcher position between one and three years from the date of successful completion of the police radio dispatcher certification examination, the student will be required to apply for certification by waiver of previous training. This determination is conducted by the department of public safety training and recruiting division staff, and approved by the director.~~

~~**E.** If a student secures a police dispatcher position after three (3) years from the completion of the police radio dispatcher certification examination, they will be required to attend and successfully complete another police radio dispatcher training program certified by the New Mexico law enforcement academy board.~~

~~**F.** Students who have successfully completed a New Mexico law enforcement academy police radio dispatch program and passed the police radio dispatcher certification examination will be provided a letter from the director of the department of public safety training and recruiting division attesting to the student's eligibility for certification as a police radio dispatcher in New Mexico.~~

~~**G.** When all paperwork is completed to the satisfaction of the director of the department of public safety training and recruiting division for any student requesting certification by successful completion of a New Mexico law enforcement academy police radio dispatch program, or~~

~~any other previous comparable training, the request will be submitted to the New Mexico law enforcement academy board for final approval and award of certification under NMSA 1978, Section 29-7-1 et. al., (Repl. Pam. 1997).]~~

**STUDENT HANDBOOK, PROCEDURES, AND REGULATIONS:** Due to the need to insure that students attending the New Mexico law enforcement academy comply with rules and regulations, the director of the New Mexico law enforcement academy is hereby instructed to prepare a handbook covering student rules and regulations, policies and procedures. Such handbook shall be updated as necessary and when applicable, changes shall be reported to the New Mexico law enforcement academy board at their next regularly scheduled meeting.

[6-1-99; 10.29.10.9 NMAC - Rn, 10 NMAC 29.10.9, 7/1/01; 10.29.10.9 NMAC - N, 01/01/04]

#### 10.29.10.10 PUBLIC SAFETY TELECOMMUNICATOR REGISTRY REPORTING AND APPLICATIONS FOR ADMISSION/CERTIFICATION

##### A. Reporting requirements

(1) Employment, termination, or upon receipt of notice of conviction of any felony charge or violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude of all telecommunicator in the state of New Mexico must be reported to the department of public safety training and recruiting division within 30 days of such action.

(2) Required reporting forms shall be established by the director of the department of public safety training and recruiting division.

(3) All public safety agencies who do not comply with the requirement of submitting to the department of public safety training and recruiting division status reports on their employees will not be eligible for training funds or attendance at basic and/or in-service/advanced training classes until the registry is made current. Repeated failures to maintain the registry shall result in a period of suspension of training eligibility to be set by the director of the department of public safety training and recruiting division.

##### B. Application requirements

(1) An applicant for training or for certification, or his / her department, must submit the initial application for admission/certification and all necessary paperwork within 30 days of the initial hire date for said applicant.

(2) Non-compliance with the 30

day application requirement will result in assignment to class after completion of all other requirements herein on a space available basis only -- no special consideration will be given the applicant and the applicant must have his / her appointment suspended if he / she exceeds one year from initial hire date.

(3) No applicant shall be admitted to the department of public safety training and recruiting division after one year of initial hire date unless the applicant and his chief, sheriff, or agency head certify:

(a) that he / she was suspended from duty as a telecommunicator; and

(b) that the department will reinstate the telecommunicator based upon his / her successful completion of the basic training course and certification by the New Mexico law enforcement academy board.

(4) The department of public safety training and recruiting division shall be notified of any change in the medical or psychological condition of an applicant prior to his / her admission or certification.

(5) Applicants who falsify any information on their application for admission or certification will not be considered for admission or certification.

[10.29.10.10 NMAC - N, 01/01/04]

#### **10.29.10.11 FINGERPRINT CLEARANCE FOR ADMISSION/CERTIFICATION**

- Due to the fact that the department of public safety training and recruiting division is not recognized by federal regulations as a duly authorized law enforcement agency and therefore cannot be issued an "ORI" to send or receive fingerprint clearances through the federal bureau of investigation, the previous procedures established by the law enforcement academy are repealed and are replaced by the following procedures:

**A.** All New Mexico public safety telecommunicator applicants for certification must receive a fingerprint clearance from the department of public safety technical and emergency support division and the federal bureau of investigation. No telecommunicator applying for telecommunicator certification is allowed to receive an original appointment on a permanent basis in New Mexico if the telecommunicator has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under dishonorable conditions from any of the armed forces of the United States, NMSA 1978, Section 29-

7C-3.

**B.** One set (2 cards) of telecommunicator applicant fingerprint cards will be thoroughly completed by the hiring public safety agency and forwarded to the department of public safety technical and emergency support division. The department of public safety technical and emergency support division will use one fingerprint card for a records check with their agency and will forward the card back to the hiring agency and will forward the second completed card to the federal bureau of investigation identification section for a records check. The department of public safety technical and emergency support division will not log in the fingerprint cards received from the various law enforcement agencies and will not accept inquiries on the status of the fingerprint clearance either for department of public safety technical and emergency support division or the federal bureau of investigation. Department of public safety technical and emergency support division will forward applicant fingerprint requests to the federal bureau of investigation within three days upon receipt of the cards. Incomplete fingerprint cards or cards not properly completed will be returned by the department of public safety technical and emergency support division to the requesting agency.

**C.** All fingerprint clearances will be forwarded from department of public safety technical and emergency support division and the federal bureau of investigation back to the initiating agency. If the "ORI" label on the fingerprint card is different than that of the hiring agency, the hiring agency requesting the clearance must print their agency's address below the address located on the fingerprint card.

**D.** Upon receipt of clearance from both the department of public safety technical and emergency support division and the federal bureau of investigation, "no record", the hiring agency will be required to complete NMLEA Form LEA-5, certified by the department head's signature, and forward this form to the department of public safety training and recruiting division stating that the telecommunicator is in compliance with NMSA 1978, Section 29-7C-3.

**E.** Upon receipt of information from the department of public safety technical and emergency support division and the federal bureau of investigation that the applicant for certification has a criminal conviction for a felony crime or crime involving moral turpitude it will be the agency's responsibility to terminate the telecommunicator. If there is not adequate information, i.e., no disposition, listed on the "rap sheet" it is the agency's responsibility to determine the disposition of the case

prior to requesting certification of the telecommunicator and certifying that the telecommunicator has no record of arrest under the provisions of the Public Safety Telecommunicator Training Act. In situations in which the agency is unable to determine the disposition of an arrest/conviction, the agency should consult the attorney general's office for assistance. For guidance in determining whether misdemeanor convictions are crimes specifically involving moral turpitude, departments should request the assistance of the attorney general's office.

**F.** No telecommunicator may be certified through the department of public safety training and recruiting division who has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under any other than an honorable discharge from any of the armed forces of the United States. Any department head certifying that an officer has "no arrest" for the above and information to the contrary is received by the department of public safety training and recruiting division or the attorney general's office, decertification procedures will be immediately initiated and the public safety agency's chief/sheriff or department head notified as well as the attorney general's office and the New Mexico law enforcement academy board.

[10.29.10.11 NMAC - N, 01/01/04]

#### **10.29.10.12 TEMPORARY AND/OR EMERGENCY CERTIFICATION**

##### **A. Procedure**

(1) The director may, in his / her discretion, grant a temporary certification in order to avoid hardships or prevent conflicts within a department arising solely from technical non compliance with academy board rules.

(2) Said temporary certificate shall be granted only for good cause, proved to the satisfaction of the director, and shall be granted only to persons who have met the minimum standards of training prescribed by the board as well as all other state requirements.

(3) Grounds for granting such temporary certification shall include, but not be limited to the following: a person qualifying for certification by waiver during a period between board meetings.

(4) A temporary certification must be approved and made permanent no later

than the next scheduled board meeting.

(5) In the event said certification is not approved and made permanent by the board, the certification shall expire and be of no further force or effect whatsoever.

**B. [Reserved]**

[10.29.10.12 NMAC - N, 01/01/04]

**10.29.10.13 RENEWAL OF CERTIFICATION AFTER ABSENCE**

**A. Break in telecommunicator employment**

(1) In the event a certified telecommunicator in the state of New Mexico leaves his position for any reason and is not employed as a telecommunicator for a period of more than two (2) years, but less than four (4) years, such telecommunicator will be considered to be decertified, and will be required to meet all current certification requirements of the New Mexico law enforcement academy and successfully complete the certification by waiver of previous training program conducted by the New Mexico law enforcement academy.

(2) In the event a certified telecommunicator in the state of New Mexico leaves his / her position for any reason and is not employed as a telecommunicator for a period in excess of four (4) years, such telecommunicator will be considered to be decertified and will be required to meet all current certification requirements and successfully complete the basic public safety telecommunicator training program.

(3) Those persons who hold a valid New Mexico public safety telecommunicator certification and are employed in an administrative capacity as a telecommunicator educator or trainer shall not be deemed to have left their position in law enforcement and shall not be required to reapply for certification as specified herein.

(4) The director of the New Mexico law enforcement academy shall have the authority to determine those positions as administrators or trainers that meet the requirements of Paragraph 3 of Subsection A of 10.29.10.12 NMAC above.

**B. Minimum allowable employment for a break in service** - An telecommunicator must show proof of having worked a minimum of six (6) consecutive months during a break in service of two (2) or less years as a telecommunicator for a recognized public safety agency of this or another state to retain their certification.

[10.29.10.13 NMAC - N, 01/01/04]

**10.29.10.14 PUBLIC SAFETY TELECOMMUNICATOR CERTIFICATION EXAMINATION; TIME LIMITATIONS**

**A.** Students who successfully complete a New Mexico law enforcement academy public safety telecommuni-

cator training program will be allowed to take the public safety telecommunicator certification examination. Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director of the department of public safety training and recruiting division, will be administered the public safety telecommunicator certification examination.

**B.** Students will be allowed two (2) opportunities in which to pass the public safety telecommunicator certification examination within one year from the date of completion of a New Mexico law enforcement academy public safety telecommunicator training program. Students who fail the test two (2) times will be required to re-enroll and successfully complete the New Mexico law enforcement academy's public safety telecommunicator training program. Students will not be allowed to attend a regional/satellite program.

**C.** Students who achieve a passing score on the public safety telecommunicator certification examination will be allowed one year from the date of the test in which to be eligible for certification. Certification can be granted only when the eligible student is hired by a recognized New Mexico law enforcement agency in a telecommunicator position.

**D.** If a student secures a public safety telecommunicator position between one and three years from the date of successful completion of the public safety telecommunicator certification examination, the student will be required to apply for certification by waiver of previous training. This determination is conducted by the department of public safety training and recruiting division staff, and approved by the director.

**E.** If a student secures a public safety telecommunicator position after three (3) years from the completion of the public safety telecommunicator certification examination, they will be required to attend and successfully complete another public safety telecommunicator training program certified by the New Mexico law enforcement academy board.

**F.** Students who have successfully completed a New Mexico law enforcement academy public safety telecommunicator training program and passed the public safety telecommunicator certification examination will be provided a letter from the director of the department of public safety training and recruiting division attesting to the student's eligibility for certification as a public safety telecommunicator in New Mexico.

**G.** When all paperwork is completed to the satisfaction of the director

of the department of public safety training and recruiting division for any student requesting certification by successful completion of a New Mexico law enforcement academy public safety telecommunicator program, or any other previous comparable training, the request will be submitted to the New Mexico law enforcement academy board for final approval and award of certification under NMSA 1978, Section 29-7-1 et. al., (Repl. Pamp. 1997).

[10.29.10.14 NMAC - Rn & A, 10.29.10.9 NMAC, 01/01/04]

**10.29.10.15 CONTINUATION OF CERTIFICATION AFTER SEPARATION**

**A. Eligibility:** In the event a New Mexico certified telecommunicator, with five years or more of certified telecommunicator employment, leaves his / her position in good standing; he / she will be eligible to continue his New Mexico certification status provided he/ she complies with the procedures outlined below.

**B. Procedure:**

(1) Every eligible telecommunicator separating from commissioned law enforcement service may continue their New Mexico certification by successfully completing each year and approved ten hour in-service training program offered by the academy. This program will comply with the provisions of 10.29.7 NMAC In-Service Training Requirements.

(2) The telecommunicator must successfully complete the first approved training program within two years of separation and then once each year during the calendar year in subsequent years.

(3) The requirements of 10.29.10.13 Renewal of Certification After Absence will apply to those telecommunicators not in compliance with the provisions of this section.

[10.29.10.15 NMAC - N, 01/01/04]

**NEW MEXICO RACING COMMISSION**

This is an amendment to 15.2.2 NMAC Section 9 and will be effective 12/30/2003.

**15.2.2.9 GAMING: ~~FINANCIAL REQUIREMENTS;~~**

**A. ASSOCIATIONS' FINANCIAL REQUIREMENTS:**

(1) An association who is a gaming operator shall pay twenty percent of the net take to purses.

~~(2) The New Mexico Horsemen's Association shall establish interest bearing accounts, designated as Gaming Funds for Purses. An Association shall deposit, by 1:00 o'clock p.m. Monday of each week~~



~~except for legal holidays which will be deposited on the next business day, twenty (20) percent of the daily net take as defined in the Gaming Control Act.]~~

~~(3)(2)~~ An association shall provide a weekly report of the previous week's daily net take payment to purses every Monday to the commission, the New Mexico horsemen's association and the New Mexico horsebreeders' association.

~~(4)(3)~~ All monies remitted by the association to the New Mexico horsemen's association shall be reconciled and settled within thirty (30) days of the generation of monthly reports from the gaming control board.

~~(5)(4)~~ An association will be liable for all portions of the gaming funds for purses from such time as the funds are received into the gaming machines until the funds are deposited into the designated interest bearing accounts. The commission may take whatever action is available under the existing rules regarding fines, suspension or revocation of license should the association fail to deposit the funds in accordance with ~~Paragraph (2)]~~ Paragraph (1) of Subsection B of Section 15.2.2.9 NMAC.

~~(6)(5)~~ The twenty-percent of the net take to purses shall be distributed as follows: ~~9.3~~ 19.3 percent of the net daily take deposited by the association will be distributed weekly by the New Mexico horsemen's association to the New Mexico horsebreeders' association to the purse fund; 80.7 percent of the net daily take deposited by the association will be distributed to the existing purse structures determined and approved by that race meet's local horsemen's committee, the horsemen's state board, and approved by the commission.

~~(7) The New Mexico horsemen's association and the New Mexico horsebreeders' association shall keep accurate, complete, and legible records with reports to the Commission to include:~~

~~Monthly reconciliation of amounts collected to account statements,  
Copy of account authorizing signatures,  
Any changes in authorizing signatures, and  
Detail of disbursements from the accounts.]~~

#### **B. ORGANIZATIONS' FINANCIAL REQUIREMENTS**

(1) The New Mexico horsemen's association shall establish interest-bearing accounts, designated as gaming funds for purses. An association shall deposit, by 1:00 o'clock p.m. Monday of each week except for legal holidays which will be deposited on the next business day, twenty (20) percent of the daily net take as defined in the gaming control act.

(2) The New Mexico horsemen's association and the New Mexico horsebreeders' association shall keep accurate,

complete, and legible records with reports to the commission to include:

(a) monthly reconciliation of amounts collected to account statements;

(b) copy of account authorizing signatures;

(c) any changes in authorizing signatures; and

(d) detail of disbursements from the accounts.

[15.2.2.9 NMAC - Rp, 15 NMAC 2.2.9, 03/15/2001; A, 12/30/2003]

### **NEW MEXICO REAL ESTATE COMMISSION**

This is an amendment to 16.61.19 NMAC, Basic Licensee Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships, Section 8, to be effective on 01-30-2004.

#### **16.61.19.8 BASIC LICENSEE DUTIES; DISCLOSURE:**

Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall disclose in writing to a prospective, buyer, seller, landlord or tenant, the following list of basic licensee duties that are owed to all customers and clients by all licensees:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules and regulations, and other applicable local, state, and federal laws and regulations;

C. performance of any and all oral or written agreements made with the licensee's customer or client;

D. assistance to the licensee's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) presentation of all offers or counter-offers in a timely manner;

(2) assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the licensee in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the licensee is not expected to provide such service, advice or assistance, and the licensee shall disclose such agreement in writing to the other licensees involved in the transaction;

E. acknowledgement by the licensee that there may be matters related to the transaction that are outside the licensee's knowledge or expertise and that the licensee will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all monies or property received by the licensee;

G. prior to the time the licensee generates or presents any written document that has the potential to become an express written agreement, written disclosure of:

(1) any written brokerage relationship the licensee has with any other parties to the transaction and/or;

(2) any material interest or relationship of a business, personal, or family nature that the licensee has in the transaction;

H. disclosure of any adverse material facts actually known by the licensee about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include data from a sex offender registry or the existence or group homes;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, a licensee shall not disclose to their customer or client during the transaction that ~~the~~ their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that ~~the~~ their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of any party for selling or buying property; that ~~the~~ their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the licensee's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004]

### **NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION**

**TITLE 12 TRADE, COMMERCE AND BANKING  
CHAPTER 16 BANKING**

**PART 76 APPLICABILITY OF HOME LOAN PROTECTION ACT**

**12.16.76.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department.  
[12.16.76.1 NMAC - N, 01/01/2004]

**12.16.76.2 SCOPE:** All state chartered banks otherwise subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003) ("Act").  
[12.16.76.2 NMAC - N, 01/01/2004]

**12.16.76.3 STATUTORY AUTHORITY:** Sections 58-1-54 and 58-1-34 NMSA 1978.  
[12.16.76.3 NMAC - N, 01/01/2004]

**12.16.76.4 DURATION:** Permanent.  
[12.16.76.4 NMAC - N, 01/01/2004]

**12.16.76.5 EFFECTIVE DATE:** January 1, 2004, unless a later date is cited at the end of a section.  
[12.16.76.5 NMAC - N, 01/01/2004]

**12.16.76.6 OBJECTIVE:** The objective of this part is to grant state chartered banks the same powers and authority that federally chartered savings associations are authorized, empowered, permitted or otherwise allowed to exercise.  
[12.16.76.6 NMAC - N, 01/01/2004]

**12.16.76.7 DEFINITIONS:** [RESERVED]  
[12.16.76.7 NMAC - N, 01/01/2004]

**12.16.76.8 FINDINGS:**  
**A.** Within the meaning of Sections 58-1-54 and 58-1-34 NMSA 1978, federal savings associations operating in New Mexico are federally chartered and insured depository institutions subject to the jurisdiction of the federal government.

**B.** The office of thrift supervision, department of the treasury, the "OTS," is authorized by federal legislation to regulate and supervise federal savings associations throughout the United States.

**C.** On September 2, 2003 the OTS issued a letter ruling (the "OTS Preemption") clarifying the fact that the following Sections and Subsections of the Act (the "Preempted Sections of the Act") are pre-empted by federal law from applying to federal savings associations operating in New Mexico:

(1) Section 58-21A-4.A. and B. (Prohibited practices and provisions regarding home loans);

(2) Section 58-21A-5.A., B., C., D., E., G., H., I., J., K., L., M., N., O., and P (Limitations and prohibited practices for

high-cost home loans);

(3) Section 58-21A-6.A., B., C., D., and E. (Default; notice; right to cure);

(4) Section 58-21A-9.A., B., and C. (Civil action);

(5) Section 58-21A-11.B. and C. (Actions based on home loans);

(6) Section 58-21A-12. (Application of Unfair Practices Act); and

(7) Section 58-21A-13. (Attorney General; enforcement of rules).

**D.** Based upon the OTS Preemption, effective January 1, 2004, federal savings associations in New Mexico will be authorized to engage in certain banking activities otherwise prohibited by the Act.

**E.** New Mexico state chartered banks will be placed at a competitive economic disadvantage to federally chartered and insured savings associations operating in New Mexico if this authority is not granted.  
[12.16.76.8 NMAC - N, 01/01/2004]

**12.16.76.9 AUTHORITY:** State chartered banks are provided the same powers and authority granted to federal savings associations as a result of the OTS Preemption.  
[12.16.76.9 NMAC - N, 01/01/2004]

**HISTORY OF 12.16.76 NMAC:** [RESERVED]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

Explanatory paragraph: This is an amendment to 3.1.4 NMAC Sections 12 & 13, effective 12/30/03. Section 12 of 3.1.4 NMAC is being amended to reflect date changes in three examples. Examples in this section provide hypothetical dates that reference the previous century. These amendments are only meant to update the year references to the current century. Section 13 of 3.1.4 NMAC is being amended to change statutory references only. These changes are necessary to reflect recent legislative changes during the 2003 Legislative Session that resulted in a re-numbering of Section 7-9-3 NMSA 1978.

### 3.1.4.12 EXTENSIONS B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:

(6) Example 2: On April 20, [199X] 20XX, T is granted a 30-day extension for payment of March, [199X] 20XX, taxes due April 25, [199X] 20XX. On May 20, [199X] 20XX, T, showing good cause, requests a further extension of the March

taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following [199X] 20XX.

### C. EXTENSIONS GRANTED WHEN NO LIABILITY HAS ARISEN:

(2) Example 1: B's business is destroyed by flood on June 1, [199X] 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25, [199X] 20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.

(3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, [199X] 20XX taxes for a period of nine months to September 25 of the year following [199X] 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted was until August 25 of the year following [199X] 20XX.

### 3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCATION

**C. REPORTING BY PERSONS ENGAGED IN THE LEASING BUSINESS:** A person from out of state who is engaged in the business of leasing as defined in [Section 7-9-3] Subsection E of Section 7-9-3 NMSA 1978 and who has no place of business or resident sales personnel in New Mexico is required to indicate "out-of-state" on the CRS-1 report form and to calculate gross receipts tax due using the tax rate for the state. An out-of-state person engaged in the business of leasing who has a place of business or resident sales personnel in New Mexico is required to report gross receipts for each municipality or area within a county outside of any municipalities in which the person maintains a place of business or resident sales personnel. An in-state person engaged in the business of leasing with more than one place of business is required to report gross receipts for each municipality or area within a county outside of any municipality in which the person maintains a place of busi-

ness.

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

Explanatory paragraph: This is an amendment to 3.2.1 NMAC Sections 7, 11, 14, 16, 18, 19, 25 and 30, effective 12/30/03. Various sections of 3.2.1 NMAC are being amended to change statutory references only. These changes are necessary to reflect recent legislative changes during the 2003 Legislative Session that resulted in a renumbering of Section 7-9-3 NMSA 1978.

**3.2.1.7 DEFINITIONS:** The terms defined in Section 3.2.1.7 NMAC apply throughout Section 3.2 NMAC.

**D. Financial corporations:**

(4) Example 3: A corporation which receives a commission on sales of money orders to its customers as an adjunct of its primary business is not a financial corporation within the meaning of ~~[Subsection D]~~ Subsection C of Section 7-9-3 NMSA 1978 simply because it engages in this business activity.

**3.2.1.11 CONSTRUCTION.**  
**A. Construction service as distinguished from other services.**

(1) The term "construction" is limited to the activities, or management of the activities, which are listed in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978 and which physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project.

**C. Construction includes.** Pursuant to ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978 the term "construction" includes the painting of structures, the installation of sprinkler systems and the building of irrigation pipelines.

**D. Construction does not include.**

(1) Pursuant to ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978, the term "construction" does not include the installation of carpets or the installation of draperies.

(2) A person engaged in the construction business, however, may deliver a Type 6 nontaxable transaction certificate for the purchase of carpets, draperies, or installed carpet or installed draperies to the seller.

(3) Even though receipts from selling carpet installation services or drapery installation services to a person engaged in the construction business are receipts

from the sale of a service for resale, a person engaged in the construction business may deliver a Type 7 nontaxable transaction certificate for the purchase of carpet installation services or drapery installation services.

~~[(4) Erecting fences is not "construction" within the meaning of Subsection C of Section 7-9-3 NMSA 1978.]~~

**E. Oil and gas industry construction.**

(1) "Construction", as this term is used in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978, includes the following activities related to the oil and gas industry:

(2) "Construction", as the term is used in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978, does not include the following activities related to the oil and gas industry:

**H. Nontaxable transaction certificates.**

(1) Nontaxable transaction certificates are available from the department for persons who are performing construction as set forth in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978 to issue to providers of construction materials and construction services.

(2) Only persons who are licensed by the state of New Mexico as construction contractors may apply for and use nontaxable transaction certificates under the provisions of Sections 7-9-51 NMSA 1978 and 7-9-52 NMSA 1978, except that a person who performs construction activities as defined in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978 in the ordinary course of business, and who is exempt from the laws of the state of New Mexico requiring licensing as a contractor may issue such certificates.

**K. Meaning of "building".**

(1) As used in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978, the noun "building" means a roofed and walled structure designed for permanent use but excludes an enclosure so closely combined with the machinery or equipment it supports, houses or serves that it must be replaced, retired or abandoned contemporaneously with the machinery or equipment.

**3.2.1.14 GROSS RECEIPTS - GENERAL.**

**D. Consideration less than fair market value:**

(2) The following example illustrates the application of ~~[Subsection F of Section 7-9-3]~~ Section 7-9-3.5 NMSA 1978 with respect to consideration less than fair market value. *Example:* X, a land and cattle company, is a corporation which is affil-

iated with Y, an equipment company. Because of their affiliation, X leases a \$30,000 tractor from Y for \$1.00 a month. Y reports that its gross receipts from this transaction are \$1.00. Y's gross receipts are the market value of a monthly lease of a \$30,000 tractor. Y must pay gross receipts tax on the adjusted amount.

**L. "Gross receipts" excludes leased vehicle surcharge:** For the purposes of Subparagraph (b) of ~~[Paragraph (2) of Subsection F of Section 7-9-3]~~ Paragraph (3) of Subsection A of Section 7-9-3.5 NMSA 1978, the term "leased vehicle gross receipts tax" includes the leased vehicle surcharge. The amount of any leased vehicle surcharge may be excluded from gross receipts.

**3.2.1.16 GROSS RECEIPTS - REAL ESTATE AND INTANGIBLE PROPERTY.**

**C. Receipts from sale of automotive service contracts:**

(2) The receipts of a person from selling an automotive service contract are not gross receipts. The undertaking, promise or obligation of the promisor under the automotive service contract to pay for or to furnish parts and service if an uncertain future event (breakdown) occurs is not within the definition of property under ~~[Subsection I]~~ Subsection J of Section 7-9-3 NMSA 1978. Since the receipts from selling an automotive service contract do not arise "from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico", the receipts are not gross receipts as defined in ~~[Subsection F of Section 7-9-3]~~ Section 7-9-3.5 NMSA 1978 and are not subject to the tax imposed by Section 7-9-4 NMSA 1978.

**3.2.1.18 GROSS RECEIPTS; SERVICES.**

**F. Sales of state licenses by nongovernmental entities.**

(2) *Example:* G owns and operates a small grocery store in rural New Mexico which is located near a popular fishing area. As a convenience to the public, G sells New Mexico Game and Fish licenses. For its services in selling these licenses, G retains a small percentage of the total license fee. The amounts retained are gross receipts because they are receipts derived from services performed in New Mexico. G may not deduct the amounts retained pursuant to Section 7-9-66 NMSA 1978 which deals with commissions derived from the sale of tangible personal property not subject to the gross receipts tax. A New Mexico game and fish license is not tangible personal property pursuant to ~~[Subsection I]~~ Subsection J of Section 7-9-

3 NMSA 1978.

X. **Construction on Indian reservations or pueblos.** The receipts of a non-Indian from construction services, as defined in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978 and regulations thereunder, performed on an Indian reservation or pueblo are subject to the gross receipts tax unless the imposition of the gross receipts tax is preempted by federal law.

GG. **Receipts of collection agencies.**

(4) *Example 2:* X, a cash basis taxpayer, sells its delinquent accounts receivable to Z, a collection agency, for a percentage of the face amount of the accounts. X's gross receipts include the full amount of the receivables, excluding any time-price differential. The amount subsequently collected by Z from those accounts, however, is not subject to gross receipts tax because the amount is not included within the definition of gross receipts. In this situation Z is buying and selling intangible property of a type not included within the definition of property in ~~[Subsection I]~~ Subsection J of Section 7-9-3 NMSA 1978.

### 3.2.1.19 GROSS RECEIPTS; RECEIPTS OF AGENTS.

B. **Receipts of condominium and other real property owners associations.**

(2) **Associations in which common areas are owned by unit owners.**

(b) Amounts received by an association of this type from unit owners for accumulation in a trust account owned by the unit owners for current or future expenditures for the improvement, maintenance or rehabilitation of the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association. However, with respect to receipts not exempt under Section 7-9-20 NMSA 1978, when payments are made from the trust account to the association or its employees, officers or representatives for the improvement, maintenance or rehabilitation, these payments are taxable gross receipts of the association under ~~[Subsection F of Section 7-9-3]~~ Section 7-9-3.5 NMSA 1978. When payments are made directly from the account to third parties, those third parties will be liable for the gross receipts tax on those receipts.

C. **Reimbursed expenditures.**

(1) The receipts of any person received as a reimbursement of expenditures incurred in connection with the performance of a service or the sale or lease of property are gross receipts as defined by ~~[Subsection F of Section 7-9-3]~~ Section 7-9-3.5 NMSA 1978, unless that person incurs

such expense as agent on behalf of a principal while acting in a disclosed agency capacity. An agency relationship exists if a person has the power to bind a principal in a contract with a third party so that the third party can enforce the contractual obligation against the principal.

### 3.2.1.25 MANUFACTURING - GENERAL EXAMPLES.

A. For purposes of ~~[Subsection G]~~ Subsection H of Section 7-9-3 NMSA 1978, combining means assembling two or more pieces of tangible personal property to create another piece of personal property. Processing means to convert tangible personal property into a marketable form. A person is engaged in the business of manufacturing only if:

(1) that person combines or processes components or materials;

(2) the value of the tangible personal property which has been combined with other tangibles or which has been processed has increased as a direct result of the manufacturing process; and

(3) the person manufacturing sells the same or similar type of manufactured products in the ordinary course of business.

B. The following examples illustrate the application of ~~[Subsection G]~~ Subsection H of Section 7-9-3 NMSA 1978.

I. *Example 7:* A is in the business of painting oil and water color pictures for sale in the ordinary course of business. A is a manufacturer of tangible personal property. A combines oils, color pigments, fixing agents, canvas, frames and glass in a painting as components and properly issues a nontaxable transaction certificate to the seller of the components. A cannot properly issue a nontaxable transaction certificate to the seller of brushes, palettes, knives, cleaners, erasers and easels since these items of property are not components for purposes of ~~[Subsection G]~~ Subsection H of Section 7-9-3 NMSA 1978.

### 3.2.1.30 USE.

A. **Storage:**

(1) The term "using" includes storage in New Mexico except where the storage is for subsequent sale of the property in the ordinary course of the seller's business or for use solely outside New Mexico.

(2) *Example 1:* D, a resident of Utah, buys pipe in Texas to be used solely in Utah. The pipe is shipped into New Mexico, unloaded, and stored for three days. It is then reloaded and shipped to Utah. There is no use of the pipe in New Mexico within the meaning of ~~[Subsection L]~~ Subsection N of Section 7-9-3 NMSA 1978. The transaction which occurred was merely storage for use solely outside New

Mexico.

(3) *Example 2:* X Construction Company purchases a bulldozer in Illinois intending to use it in its construction business. The bulldozer is then delivered to X in New Mexico. X does not have any immediate use for the bulldozer so it is stored in the back lot of the construction company with other equipment. Two months later X changes plans and sells the bulldozer to Y Construction Company who needs it for a job. The bulldozer remained in storage from the day X received it until the day it was sold. Since the storage of the tractor was not for subsequent sale in the ordinary course of X's business, the storage of the tractor is a "use" within the meaning of ~~[Subsection L]~~ Subsection N of Section 7-9-3 NMSA 1978. Therefore, X Construction Company will be subject to the compensating tax on the value of the tractor because it has used the property in New Mexico.

B. **Use - general example:**

The following example illustrates the application of ~~[Subsection L]~~ Subsection N of Section 7-9-3 NMSA 1978. *Example:* D purchases a juke box in Texas for use in a coin-operated music business in New Mexico. D maintains that the machine is not being used in New Mexico within the meaning of the law. D says that the machine is being held for sale in the ordinary course of business since the machine is paid for by people playing records on it. D is not holding the machine for resale but is merely granting a license to use the machine.

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.2 NMAC Section 11, effective 12/30/03.

### 3.2.2.11 REPORTING OF PROGRESS PAYMENTS:

A contractor who receives progress payments or other consideration for services performed on and materials provided for a construction project as defined in ~~[Subsection C of Section 7-9-3]~~ Section 7-9-3.4 NMSA 1978 must report such payments or other consideration as gross receipts. If the contractor is a cash-basis taxpayer, the contractor must report any such payments or other consideration actually received in a particular month as receipts for that month. If the contractor is an accrual basis taxpayer, any amounts which the contractor earned or billed or to which the contractor became entitled during a particular month must be reported as receipts for that month as required by Section 7-9-11 NMSA 1978.

**NEW MEXICO BOARD OF VETERINARY MEDICINE**

This is an amendment to 16.25.2 NMAC, Section 20.

**16.25.2.20 FEES FOR EXAMINATION AND LICENSURE:**

- A.** State examination
    - (1) For applicants who do not qualify for endorsement, to take the exam:
      - (a) at one of the regularly scheduled times - \$200
      - (b) at an individually scheduled special time - \$500
    - (2) For applicants who qualify for endorsement, to take the exam (jurisprudence only):
      - (a) at one of the regularly scheduled times - \$500
      - (b) at an individually scheduled special time - \$500
  - B.** Annual DVM license renewal - [~~\$125~~] \$175.
  - C.** New licensee's first-year (partial-year) - fee prorated from date of license issue until renewal date (birth month)
  - D.** 60-day temporary license - \$200
  - E.** Late-renewal penalties:
    - (1) if postmarked no later than 30 days past expiration date - \$100
    - (2) if postmarked more than 30 days after expiration date - \$10 per day
    - (3) Any veterinarian practicing with a lapsed license is practicing in violation of the law.
- [16.25.2.20 NMAC - Rp, 16 NMAC 25.2.17.1 and 25.2.19.1, 7-25-01; A, 1-10-2004]

**NEW MEXICO BOARD OF VETERINARY MEDICINE**

This is an amendment to 16.25.7 NMAC, Section 9.

**16.25.7.9 FACILITY LICENSE FEES:**

- A.** Fees shall include, but may not be limited to, the following:
  - (1) initial facility license (for up to one year), [~~\$75~~] \$100.
  - (2) annual license renewal, [~~\$75~~] \$100.
- (a) Late-renewal penalties:
  - (i) postmarked after September 30 but no later than October 30, \$25.
  - (ii) postmarked after October 30, \$100.
- (b) Administrative penalties as may be determined by the board.
- B.** The names of facilities

whose license renewals are more than 30 days overdue are brought to the next regular board meeting and are published in the board's newsletter.  
[16.25.7.9 NMAC - N, 09-01-00; A, 1-10-2004]

**NEW MEXICO BOARD OF VETERINARY MEDICINE**

This is an amendment to 16.25.8 NMAC, Section 9.

**16.25.8.9 INSTRUCTION, EXAMINATIONS, AND LICENSING:**

- A.** To obtain an AI and/or PD permit, an applicant must:
  - (1) complete AI and/or PD instruction given by the AI/PD examiner or through another institution, as approved by the board.
    - (a) To request board approval for a particular AI/PD course of instruction--for example, instruction given out of state--an applicant must provide the board with a course outline/description, including number of instructional contact hours.
    - (b) At its next meeting, the board discusses the request and makes a determination.
      - (2) pass the AI and/or PD exam(s) prepared and administered by the AI/PD examiner. The purpose of the examination(s) is to determine the knowledge and proficiency of each applicant. The exam is in two parts, written and practical. The passing grade is determined by the board.
      - (3) be recommended by the examiner as qualified for the AI and/or PD permit(s).
  - B.** Upon the examiner's recommendation, the board may issue an AI and/or PD permit.
  - C.** Each artificial insemination and/or pregnancy diagnosis permit applicant has one year in which to apply to the board for a permit after passing the examination(s). If the applicant does not apply for a permit within one year, he/she must retake the examination(s).
  - D.** AI/PD permit fees are paid as follows:
    - (1) Fees for instruction are paid directly to the person or institution that provides the instruction, whether this is the board-designated examiner or some other institution.
    - (2) Examination fees are paid directly to the board-designated examiner
    - (3) Fees for initial AI/PD permits and annual renewals are paid to the board of veterinary medicine, as follows:
      - (a) initial permit (each permit, AI or PD), [~~\$50~~] \$75.
      - (b) annual permit renewal (each permit), [~~\$50~~] \$75.

- (c) late-renewal penalty fees:
    - (i) postmarked after December 31 but no later than January 31, \$25.
    - (ii) postmarked after January 31, \$50.
- [16.25.8.9 NMAC - Rp, 16 NMAC 25.8.8 & 9, 10-12-00; A, 1-10-2004]

**End of Adopted Rules Section**

## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2003

| <b>Volume XIV</b> | <b>Submittal Deadline</b> | <b>Publication Date</b> |
|-------------------|---------------------------|-------------------------|
| Issue Number 17   | September 2               | September 15            |
| Issue Number 18   | September 16              | September 30            |
| Issue Number 19   | October 1                 | October 15              |
| Issue Number 20   | October 16                | October 30              |
| Issue Number 21   | 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             |

### 2004

| <b>Volume XV</b> | <b>Submittal Deadline</b> | <b>Publication Date</b> |
|------------------|---------------------------|-------------------------|
| Issue Number 1   | January 2                 | January 15              |
| Issue Number 2   | January 16                | January 30              |
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| Issue Number 5   | March 1                   | March 15                |
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| Issue Number 20  | October 15                | October 29              |
| Issue Number 21  | November 1                | November 15             |
| Issue Number 22  | November 16               | November 30             |
| Issue Number 23  | December 1                | December 14             |
| Issue Number 24  | December 15               | December 30             |

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