

**NEW
MEXICO
REGISTER**

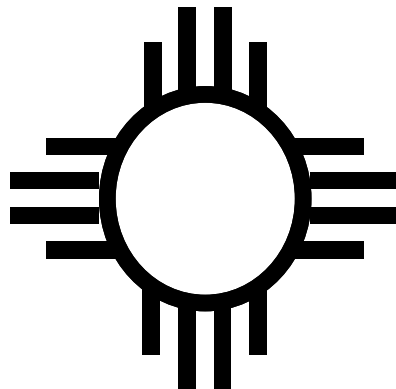


**Volume XIX
Issue Number 15
August 14, 2008**

New Mexico Register

Volume XIX, Issue Number 15

August 14, 2008



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

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New Mexico Register

Volume XIX, Number 15

August 14, 2008

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

**NEW MEXICO
DEPARTMENT OF FINANCE AND
ADMINISTRATION
STATE BOARD OF FINANCE**

NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION

STATE BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE RULE

The State Board of Finance is in the process of revising one of its rules: Distribution of Private Activity Bond Allocations. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe NM 87501 and on the Board of Finance website, <http://board.nmdfa.state.nm.us>. The Board will consider adopting the proposed rule at its September 16, 2008 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Stephanie Schardin, 181 Bataan Memorial building, Santa Fe, NM 87501 by September 14, 2008.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on September 16, 2008, from 11:00 a.m. to 12:00 p.m.. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.19.7	High School Assessment System	Adopt new rule

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Ms. Darlene Frank, Assessment and Accountability Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (darlene.frank@state.nm.us) (505) 827-6683 (fax (505) 827-6689).

Written comments must be received no later than 5:00 pm on August 14, 2008. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking action may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Darlene Frank, Assessment and Accountability, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (darlene.frank@state.nm.us) (505) 827-6683 (fax (505) 827-6689). The proposed rule will be made available at least thirty days prior to the hearings.

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

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

NOTICE OF REGULAR MEETING

The State Commission of Public Records has scheduled a regular meeting for Tuesday, August 26, 2008, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by August 22, 2008. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendment

1.18.790 NMAC E R R D S ,
Department of Public Safety

Repeal

1.18.350 NMAC E R R D S ,
General Services Department
1.18.805 NMAC E R R D S ,
State Highway and Transportation
Department

Replacement

1.18.350 NMAC E R R D S ,
General Services Department
1.18.805 NMAC E R R D S ,
Department of Transportation

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

STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION
of the
Regulation and Licensing Department

NOTICE OF PUBLIC HEARING

A Public Hearing on the proposed adoption of the National Fire Protection Association 54, National Fuel Gas Code, 2006 Edition and the National Fire Protection Association 921, Guide for Fire and Explosion Investigations, 2008 Edition will be held on **TUESDAY, September 16, 2008, FROM 9:00 A.M. TO 12:00 P.M.**, at the following location:

ALBUQUERQUE, NM - CID Conference Room: 5200 Oakland Avenue, NE

Copies of NFPA 54, National Fuel Gas Code and NFPA 921, Guide for Fire and Explosion Investigations will be available for review at the Construction Industries Division Albuquerque office beginning August 15, 2008.

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., September 16, 2008.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than September 1, 2008. Telephone: 505-476-4700. Email: www.rld@state.nm.us/cid Fax No. 505-476-4685.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
MANUFACTURED HOUSING
DIVISION**

**State Of New Mexico
Regulation and Licensing Department
Manufactured Housing Division**

**LEGAL NOTICE
NOTIFICATION OF PUBLIC
HEARING
RULEMAKING
Manufactured Housing Committee**

The Manufactured Housing Committee has scheduled a Public Hearing for September 23, 2008. The purpose of this hearing will be to receive public comment on proposed changes to the Manufactured Housing Rules and Regulations, Section 14.12.2.7, 14.12.2.10, 14.12.2.11, 14.12.2.12, 14.12.2.13, 14.12.2.15, 14.12.2.16, 14.12.2.17, 14.12.2.22, 14.12.2.24, 14.12.2.25, 14.12.2.26, 14.12.2.38, 14.12.2.41, and 14.12.2.57 New Mexico

Administrative Code (NMAC).

The Hearing will be held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Toney Anaya Building, 2nd Floor, Hearing Room 1, at 9:00 a.m. – 12:00 Noon. The hearing will be conducted by the Manufactured Housing Committee.

In addition to receiving public comment at the September 23, 2008 public hearing, the Manufactured Housing Committee will receive written comments between the time period of August 14, 2008 and September 22, 2008. Written comments should be mailed, or delivered to, the Manufactured Housing Division of the Regulation and Licensing Department, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico, 87505. Written comments may also be faxed to (505) 476-4856.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than September 22, 2008.

Benito J. Martinez, Jr., MHD Director
Manufactured Housing Division
2550 Cerrillos Road
P.O. Box 25101
Santa Fe, New Mexico 87505
(505) 476-4775

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

8.14.4 NMAC, Facility Medical and Mental Health Services, filed August 16, 2004 is repealed and replaced by 8.14.4 NMAC, Facility Medical and Behavioral Health Services, effective August 15, 2008.

8.14.5 NMAC, Facility Operations, filed December 16, 2005 is repealed and replaced by 8.14.5 NMAC, Facility Operations, effective August 15, 2008.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 4 FACILITY MEDICAL AND BEHAVIORAL HEALTH SERVICES

8.14.4.1 ISSUING AGENCY:
New Mexico Children, Youth and Families Department.
[8.14.4.1 NMAC - Rp, 8.14.4.1 NMAC, 8/15/2008]

8.14.4.2 SCOPE: This rule applies to clients, facility staff and health care providers administering care to the clients in the facilities of the juvenile justice services of children, youth and families department and the operators of facilities contracted by CYFD.
[8.14.4.2 NMAC - Rp, 8.14.4.2 NMAC, 8/15/2008]

8.14.4.3 STATUTORY AUTHORITY: NMSA 1978 section 9-2A-7(D) (2005) authorizes the secretary of the children, youth and families department (CYFD) to adopt regulations as necessary to carry out the duties of CYFD. NMSA 1978 section 32A-2-19(B) provides that delinquent children may be committed to the legal custody of CYFD for placement, supervision and rehabilitation and more generally NMSA 1978, section 32A-2-1 et seq., (2005) the Delinquency Act, contains various provisions relating to the commitment and custody of delinquent children.
[8.14.4.3 NMAC - Rp, 8.14.4.3 NMAC, 8/15/2008]

8.14.4.4 DURATION:
Permanent.

[8.14.4.4 NMAC - Rp, 8.14.4.4 NMAC, 8/15/2008]

8.14.4.5 EFFECTIVE DATE:
August 15, 2008, unless a later date is cited at the end of a section.

[8.14.4.5 NMAC - Rp, 8.14.4.5 NMAC, 8/15/2008]

8.14.4.6 OBJECTIVE: To establish standards for providing medical, dental and behavioral health care to clients in the facilities of juvenile justice services of the children, youth and families department and the operators of facilities contracted by CYFD.

[8.14.4.6 NMAC - Rp, 8.14.4.6 NMAC, 8/15/2008]

8.14.4.7 DEFINITIONS:

A. 15-day diagnostic evaluation refers to the court-ordered evaluation for purposes of diagnosing the child and preparing a report to the court indicating what disposition appears most suitable when the interests of the child and the public are considered. See, NMSA 1978, Section 32A-2-17(D) (2005).

B. 15-day diagnostic evaluation report refers to the written report prepared for the court incorporating the findings of the 15-day diagnostic evaluation.

C. Behavioral health authority refers to persons designated to direct the delivery of services for CYFD and facility level for behavioral health matters.

D. Behavioral health staff refers to employees assigned to the behavioral health unit of a facility, including appropriately licensed physicians, psychiatrists, psychologists, social workers and counselors.

E. Central intake refers to the entry point for clients committed to the custody of CYFD.

F. Classification refers to an assessment of the client's risk, needs and strengths by which facility staff determine the level of care and management of clients; the system and procedure through which new clients are assessed and assigned to the appropriate facility and living unit.

G. Client refers to a person who is committed to the custody of CYFD's juvenile justice services or who is receiving services from CYFD's juvenile justice services.

H. Clinically ordered mechanical restraints refers to devices used to limit the movement of a client's body for medical or behavioral health rea-

sons.

I. Contract facilities refers to those facilities which contractually operate secure or non-secure facilities for CYFD. These facilities comply with JJS policies and procedures concerning client care.

J. Contract staff refers to a person who is under contract with CYFD to provide contractually specified medical or behavioral health care services to juvenile justice clients.

K. Counselor refers to an individual who has a master's degree in counseling, substance abuse or related field who is licensed by the New Mexico counseling and therapy practice board.

L. CYFD refers to the New Mexico children, youth and families department.

M. Emergency response plan refers to a written document that specifies what actions will be taken in the event of an emergency or disaster.

N. Facility refers to a facility operated by, or on behalf of, CYFD's juvenile justice services for purposes of housing and providing care for clients committed to the custody of CYFD.

O. First aid refers to care for a condition requiring immediate assistance from an individual trained in first aid care.

P. Food hygiene and safety refers to the handling, preparing, and storing of foods to assure compliance with federal, state and local codes and regulations regarding nutrition, safety and hygiene.

Q. Grievance system refers to systems and procedures available to clients and families to resolve grievances with facility operations and services.

R. Health insurance portability and accountability act (HIPAA) privacy officer refers to the person designated by the secretary to implement compliance with the privacy provisions of the Health Insurance Portability and Accountability Act of 1996.

S. Health promotion and disease prevention refers to health education, nutrition, and exercise, and personal hygiene services.

T. Incident reporting and review refers to procedures in place at facilities to report events requiring JJS or CYFD response.

U. Infection control program refers to standard precautions to minimize infectious and communicable diseases among clients and staff.

V. Intake behavioral

health screening refers to a system of structured observation and initial behavioral health assessment of newly arrived clients, for purposes of determining behavioral health treatment needs and appropriate facility placement.

W. Intake medical screening refers to a system of structured observation of initial medical assessment of newly arrived clients.

X. Juvenile justice services (JJS) refers to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978, Section 32A-2-1 et seq. (2005).

Y. Licensed practical nurse (LPN) refers to an individual who is licensed by the New Mexico board of nursing as a licensed practical nurse.

Z. Living unit refers to an area in a CYFD facility where clients are assigned to perform activities of daily living and to sleep.

AA. Medical health authority refers to persons designated to direct the delivery of services at the CYFD, JJS, or facility level for medical matters.

BB. Medical staff refers to employees or contractors assigned to the medical unit of a facility, including appropriately licensed physicians, psychiatrists, physician's assistants, nurse practitioners (NPs), registered nurses (RNs), licensed practical nurses (LPNs), and emergency medical technicians (EMTs), dentists, dental hygienists, dental assistants, and optometrists.

CC. Mid-level provider refers to medical staff at the level of physician's assistant or nurse practitioner.

DD. Multi-disciplinary team (MDT) refers to the team that meets at the facility to develop, monitor, and revise client plans for placement and services. The team includes the client and family member(s), and behavioral health, education, medical, a security representative, the juvenile probation and parole officer and a transition coordinator.

EE. Multidisciplinary action plan (MAP) refers to the plan developed at the first multidisciplinary team (MDT) meeting following placement at the facility and reviewed and updated at each subsequent MDT. The plan included goals and objectives in all disciplines and is broadly available to all staff with client contact.

FF. Non-secure facility refers to a facility where the clients have attained a higher level of trust and responsibility. Clients in these facilities may be attending school or working in the community.

GG. Officer in charge (OIC) refers to the administrative officer

who is in charge of the facility in the absence of the facility superintendent.

HH. Pharmaceutical refers to a medication of any chemical compound or narcotic listed in the United States pharmacopoeia and national formulary (USP-NF), that may be administered to humans as an aid in the diagnosis, treatment or prevention of disease or other abnormal condition, for the relief of pain or suffering, or to control or improve any medical or behavioral health condition.

II. Physical intervention refers to physical contact of a client by staff to control or restrict the movement of the client to protect the health or safety of the client, staff or another person, using a technique approved by CYFD and taught in a CYFD-approved course.

JJ. Physician refers to an individual with a medical degree (M.D. or D.O.) appropriately licensed to practice in New Mexico.

KK. Primary care provider refers to medical physicians, psychiatrists, dentists, mid-level provider and doctoral level licensed psychologists.

LL. Psychiatrist refers to a physician who is specialized to practice in the area of psychiatry and behavioral health, appropriately licensed to practice in New Mexico.

MM. Psychologist refers to an individual with a Ph.D. or Psy.D. in psychology who is licensed by the New Mexico board of psychologist examiners.

NN. Quality assurance and continuous quality improvement systems are programs that monitor and review health and behavioral health care access and delivery at facilities.

OO. Receiving facility refers to the facility to which a client is being transferred.

PP. Registered nurse (RN) refers to an individual who is licensed by the New Mexico board of nursing as a registered nurse.

QQ. Sanitation and hygiene program refers to services provided at the facility to ensure a clean, safe and healthy environment.

RR. Secretary refers to the secretary of CYFD.

SS. Secure facility refers to a facility that is either physically or staff-secure. Clients in secure facilities generally do not attend school or work in the community.

TT. Sending facility refers to the facility from which a client is being transferred.

UU. Separation refers to any instance in which a client is confined alone, either in a room other than the room in which the client usually sleeps, or in the client's room at a time when the client

would otherwise be at liberty to leave the room or when the client is removed from regularly scheduled activities. This does not include protective isolation for injured clients or clients whose safety is threatened, nor routine isolation at the time of client admission, isolation for medical reasons, or removal from regularly scheduled activities to attend medical, behavioral health or other similar appointments.

VV. Social worker refers to a person who is licensed by the New Mexico board of social work examiners.

WW. Special needs and services refers to programs and services for clients requiring close medical supervision including chronic disease, serious infectious and communicable disease, HIV/AIDS, terminal illness, mental illness, developmental disability, convalescent care, management of prostheses and orthodontic devices, care of clients in need of behavior management and crisis intervention, and care of clients in need of behavior management, crisis response, and suicide prevention.

XX. Staff refers to employee(s) of CYFD.

YY. Standards of care refer to standards developed or adopted by JJS that specify how care and treatment will be delivered to clients.

ZZ. Superintendent refers to the chief facility administrator for the secure and non-secure centers.

AAA. Use of force refers to those actions required for justifiable self defense, protection of the client or others, protection of property, and prevention of escapes.

[8.14.4.7 NMAC - Rp, 8.14.4.7 NMAC, 8/15/2008]

8.14.4.8 HEALTH SERVICES ORGANIZATION AND MANAGEMENT

A. A medical health authority is established at the JJS level to oversee the provision of medical health care to all facility clients. A medical health authority may be appointed at the juvenile justice facility level to oversee the provision of medical services to clients at a specific JJS facility.

B. A behavioral health authority is established at the JJS level to oversee the provision of behavioral health care to all facility clients. A behavioral health authority at the juvenile justice facility level may be appointed to oversee the provision of behavioral health services to clients at a specific JJS facility.

C. Standards of care: Medical and behavioral health authorities are responsible for standards of care regarding access and quality of care.

D. Planning and monitoring: Medical, behavioral health and admin-

istrators at CYFD, JJS and facility levels jointly develop comprehensive plans for the delivery of medical and behavioral health services at juvenile justice facilities. Medical, behavioral health and administrators at CYFD, JJS and facility levels jointly monitor and resolve problems related to medical, dental and behavioral health care.

E. Quality assurance and continuous quality improvement systems are in place at CYFD, JJS and facility level to monitor and review health and behavioral health care access and delivery at facilities.

F. Emergency response plans are in place at all facilities to protect the health, safety and welfare of clients, staff and visitors during emergencies. Facility emergency response plans include medical and behavioral health components.

G. Grievance system: Clients have a right to question health care decisions and services. A grievance system is in place to process and resolve them.

H. Incident reporting and review: An incident reporting system is in place that identifies medical or behavioral health related events occurring at JJS facilities that must be reported to designated department level management.

I. Notification: Medical and behavioral health authorities, the OIC or designees notify the client's parent/guardian/custodian of any serious illness, surgery, injury, or death.

J. Prison Rape Elimination Act compliance: Each facility has written procedures regarding the detection, prevention, reduction and punishment of rape consistent with federal law.

K. Client and family participation; refusal of care; consent to care: Medical and behavioral health staff encourages client and family participation in medical and behavioral health care as indicated. Statutory requirements regarding informed consent for medical and behavioral health care are followed.

L. Any biomedical, behavioral, or other research using JJS clients as subjects shall be conducted only with the written informed consent of the client, and the written informed consent of the client's parent(s) or legal custodian or guardian if the client is a minor, and shall conform to established ethical, medical and regulatory standards for human research. Any person desiring to conduct biomedical, behavioral or other research using JJS clients as subjects must document to CYFD that the research project will conform to federal regulations that apply to persons who are incarcerated and to children, if the clients involved in the research project are minors. Any research project approved by appropriate external reviewers must then be reviewed and approved or disapproved by

the JJS director to ensure that the project conforms with the policies of CYFD before the research project may begin.

M. Forensic information: The role of medical and behavioral health services staff is to serve the health needs of clients. Medical and behavioral health treatment staff is prohibited from participating in the collection of forensic information.

N. Deaths: The medical health authority reviews all deaths and findings are made regarding appropriateness of clinical care and need for corrective action.

O. Response to person hanging: Any facility staff member finding another person hanging by the neck places the highest priority on preserving the client's life.

[8.14.4.8 NMAC - Rp, 8.14.4.8 NMAC, 8/15/2008]

8.14.4.9 FACILITY MEDICAL AND BEHAVIORAL HEALTH OPERATIONS

A. Space, equipment and supplies: Adequate space, equipment, supplies and materials are available for the facility's medical, dental and behavioral health services.

B. Pharmacy: Facility pharmacy operations are sufficient to meet the needs of the facility and are in accordance with legal requirements.

C. Diagnostic services: On-site diagnostic services are registered, accredited, or otherwise meet applicable state and federal laws.

D. Off-site hospital and specialty care: Arrangements are made to provide off-site hospitalization and specialty care to clients in need of these services. [8.14.4.9 NMAC - N, 8/15/2008]

8.14.4.10 ENVIRONMENTAL HEALTH AND SAFETY AND INFECTION CONTROL

A. Infection control program: There is an effective infection control program that minimizes the incidence of infectious and communicable diseases among clients and staff in facilities.

B. Sanitation and hygiene: Each facility ensures that clients are housed, work, study, recreate and receive health care in a clean, safe and healthy environment. Health staff works in safe and sanitary conditions. Each facility is in compliance with applicable federal, state and local sanitation and health codes.

C. Food hygiene and safety food storage, handling and preparation: Meals are nutritionally balanced, well-planned and prepared and served in a manner that meets all established federal, state and local codes and regulations regarding nutrition, safety and hygiene. Contract

providers comply with CYFD rules. [8.14.4.10 NMAC - N, 8/15/2008]

8.14.4.11 PERSONNEL AND TRAINING - JJS AND CONTRACT PROVIDERS

A. Credentialing, licensure and certification of health care professionals: All medical, dental and behavioral health care personnel who provide services to clients are appropriately credentialed according to the licensure, certification and registration requirements of the state of New Mexico.

B. Physical examination: Applicants selected for security positions have a post-job offer pre-employment physical examination prior to final appointment to determine if staff is able to perform the essential functions of the position. Department medical staff will give PPD skin tests to all JJS employees. JJS will collect information on employee vaccinations for measles, mumps and rubella (MMR). JJS will offer hepatitis B vaccinations to employees.

C. Professional (peer) practice review of health care professionals: A clinical performance enhancement process evaluates the appropriateness of all primary care providers' services.

D. Continuing education for medical and behavioral health care professionals: All medical and behavioral health care professionals participate annually in continuing education appropriate to their positions.

E. Health related training for facility staff: A training program, established or approved by the medical and behavioral health authorities in cooperation with the superintendent, guides the health and behavioral health-related training of all facility staff who work with clients.

F. Training in medication self-administration: Facility staff who supervise client self-administration of prescription medications are trained in matters of security, accountability, common side effects and documentation of self-administration of medicines.

G. Role of clients working in health care program: Clients are prohibited from being used as health care workers.

H. Facility staffing plans: A written staffing plan assures that a sufficient number of health and behavioral health staff is available to provide adequate and timely evaluation and treatment consistent with contemporary standards of care. [8.14.4.11 NMAC - N, 8/15/2008]

8.14.4.12 CLIENT CARE AND TREATMENT

A. Clients information and access to services: Clients and families are

given information about the availability of medical, dental, and behavioral health services at the facility upon arrival. Clients and families are also given information about how to access medical, dental, and behavioral health services. Information is provided in a form and language that the client and their family understands. All clients and families have the opportunity to request health care daily. All clients have the opportunity to grieve medical and behavioral health services. Client requests and grievances are documented and reviewed for immediacy of need and the intervention required.

B. 24-hour emergency care: Each facility has a written plan developed by the superintendent or program manager and approved by the JJS director and medical and behavioral health authorities to provide 24-hour medical, dental and behavioral health services. These plans include but are not limited to on-site emergency first aid, crisis intervention; emergency transport; use of local emergency medical services (EMS); use of one or more designated hospital emergency departments or other appropriate service providers; emergency on-call and on-site medical, dental or behavioral health services; security procedures for the immediate transfer of clients when medically necessary; and emergency evacuation.

C. Transport of clients: Clients are transported safely and in a timely manner for medical, dental or behavioral health needs both inside and outside the facility.

D. Client transfers and continuity of care: When a client is transferred to another facility, the client's medical and behavioral health information is sent and arrangements are made between the sending and receiving facility to provide for continuity of care and updated screening.

E. Medical services at intake screening: All new and transferring clients receive a comprehensive intake medical screening performed by qualified health care professionals upon arrival at the facility. Findings are recorded on a screening form approved by the medical health authority.

F. Medical services involving the medical treatment plan: Clients are provided a medical treatment plan that outlines services to address medical and dental needs.

G. First aid: All facilities are equipped with first aid kits. Staff is trained to provide first aid.

H. General medical care: Clients are provided with medical care that is indicated.

(1) Staff and qualified health care professionals provide diagnostic and other

health services at the facilities according to the orders written for the client by qualified healthcare professionals.

(2) Whenever necessary, clients are treated by community healthcare providers.

(3) Any questions about appropriate care in individual cases are referred to the medical health authority or medical director. However, this shall not be construed to prohibit staff from responding to inquiries from a client advocate, if the advocate has proper authorization and the staff member chooses to speak with the advocate.

(4) Diagnostic and treatment results are used by clinicians to modify the medical treatment plans as appropriate.

(5) Care is timely and includes immediate access for urgent or painful conditions.

I. Vision care: Clients are provided with vision care under the direction and supervision of an optometrist appropriately licensed in New Mexico.

(1) Care is timely and includes immediate access for urgent or painful conditions.

(2) Clients are provided with glasses as prescribed by licensed optometrist providers.

J. Oral care: Clients are provided with oral care under the direction and supervision of a dentist licensed in New Mexico. Care is timely and includes immediate access for urgent or painful conditions.

K. Pregnancy care: Pregnant clients are provided with routine pre-natal, post-partum care and high-risk treatment as necessary under the direction and supervision of an obstetrician, gynecologist or family practice physician appropriately licensed in New Mexico. Pregnant clients will be informed that family planning services, which include social services, educational services, informational services, will be provided to them upon request. Care is timely and includes immediate access for urgent or painful conditions.

L. Hospitalization: Hospitalization is provided when necessary for medical needs and conditions.

(1) Clients are accompanied to the hospital by a staff member.

(2) Staff remains with the client for as long as a security need exists.

M. Pharmaceuticals: Pharmaceuticals are administered according to the documented client treatment plan, pursuant to a drug administration protocol and are not administered solely for purposes of population management and control nor for purposes of experimentation or research.

N. Behavioral health services at intake screening: All new and trans-

ferring clients receive a comprehensive intake behavioral health screening performed by qualified behavioral health care professionals upon arrival at the facility. Findings are recorded on a screening form approved by the behavioral health authority. Clients with a positive screening receive a behavioral health evaluation

O. Behavioral health services involving the behavioral health treatment plan: Clients are provided a behavioral health treatment plan that outlines services to address behavioral health needs.

P. Behavioral health care: Clients are provided with behavioral health care that is indicated.

(1) Staff and qualified behavioral health care professionals provide diagnostic and other behavioral health services at the facility according to the client's identified needs.

(2) Whenever necessary, clients are referred to and treated by community behavioral healthcare providers.

(3) Any questions about appropriate care in individual cases are referred to the behavioral health authority. However, this shall not be construed to prohibit staff from responding to inquiries from a client advocate, if the advocate has proper authorization and the staff member chooses to speak with the advocate.

(4) Diagnostic and treatment results are used by clinicians to modify behavioral health treatment plans as appropriate.

(5) Care is timely and includes immediate access for urgent conditions.

Q. Substance abuse and chemical dependency services: Clients are provided with detoxification and substance abuse treatment services under the direction and supervision of a qualified medical or behavioral health professional appropriately licensed in New Mexico. Care is timely and includes immediate access for urgent conditions.

R. Discharge planning: Discharge planning is provided for clients whose release is imminent.

[8.14.4.12 NMAC - Rp, 8.14.4.12, 13, 15, 18, 21, 22, 23, 28 NMAC, 8/15/2008]

8.14.4.13 SPECIAL NEEDS AND SERVICES

A. Clients needing close medical supervision: A proactive program exists that provides care for special needs clients who require close medical supervision or multidisciplinary care.

B. Chronic disease: Clients with chronic diseases are identified and provided medical and other services with the goal of decreasing the frequency and severity of symptoms, including preventing disease progression and fostering improvement in function.

C. Prostheses and orthodontic devices: Medical and dental orthoses or prostheses and other aids to impairment are supplied in a timely manner when the health of the client would otherwise be adversely affected, as determined by a qualified health or dental health care professional. Clients are provided with one prosthesis or orthodontic device as prescribed by licensed medical or dental provider. Replacements are the responsibility of the client or their family if they are purposefully damaged, destroyed or ruined due to inappropriate client behavior.

D. HIV/AIDS: Facilities have written plans regarding approved actions to be taken by health and facility staff concerning clients who have been diagnosed as HIV positive.

E. Serious, infectious and communicable disease: Facilities have written plans addressing the management of serious, infectious and communicable disease that include control, prevention and treatment strategies.

F. Clients with mental illness or developmental disability: Services are provided to clients with mental illness and developmental disabilities and referral sources are identified as needed.

G. Clients in need of behavior management and crisis intervention: Any time use of force is applied to a client, only approved methods in compliance with approved department intervention programs is enforced. The least restrictive element of the process is used in every situation.

H. Care of clients physically separated from population: Anytime separation is implemented, only approved methods are used, in compliance with approved department separation procedures. The least restrictive element of the process is used in every situation. When a client is physically separated from the rest of the population, medical and behavioral health staff monitor medical and behavioral health status and ensure that the client has the opportunity to request care for medical, dental, or behavioral health problems.

I. Clients with a terminal illness: The health and mental health needs of the terminally ill client are met.

J. Suicide prevention and crisis response: JJS facilities have a crisis response and suicide prevention protocol that provides for the identification and response to suicidal clients and clients in crisis; all staff are trained in the protocol as well as the identification of warning signs or indicators.

[8.14.4.13 NMAC - N, 8/15/2008]

8.14.4.14 HEALTH PROMOTION AND DISEASE PREVENTION

A. Health education: Health education is offered to all clients; all patients are provided with individual health instruction.

B. Nutrition and medical diets: Nutrition and medical diets are provided that enhance clients' health and are modified when necessary to meet specific requirements related to clinical conditions.

C. Exercise and recreation: All clients are offered the health benefits of exercise.

D. Client personal hygiene: The facility provides sufficient services and supplies so that clients' personal hygiene needs are met.

E. Client screening: All clients are regularly screened for current health status.

F. Smoke free environment: Each facility is smoke-free for clients and staff.

(1) Clients may not use tobacco in any form.

(2) There are prevention and abatement activities regarding the use of all tobacco products.

[8.14.4.14 NMAC - Rp, 8.14.4.14 NMAC, 8/15/2008]

8.14.4.15 FIFTEEN (15) DAY DIAGNOSTIC EVALUATION: CYFD ensures that clients who undergo a 15-day diagnostic evaluation, pursuant to Section 32A-2-17(D) of the Delinquency Act, receive a comprehensive diagnostic evaluation. A written report of the results of the diagnostic evaluation is provided to the court.

[8.14.4.15 NMAC - Rp, 8.14.4.9 NMAC, 8/15/2008]

8.14.4.16 HEALTH RECORDS: Health records are maintained in a consistent manner between facilities. The confidentiality of a client's written or electronic health record, as well as verbally conveyed health information, is maintained. Health records are maintained under security and completely separate from clients' custody records.

[8.14.4.16 NMAC - N, 8/15/2008]

HISTORY OF 8.14.4 NMAC:

Pre-NMAC History: The material in this part replaces the material that was previously filed with the State Records Center under:

YDDC/GS 17-01, Administration of Health Care Services, filed 5/23/90.

YDDC/GS 17-06, Medical Records, filed 5/23/90.

YDDC/GS 17-10, Management of Pharmaceuticals, filed 5/23/90.

YDDC/GS 17-12, Communicable Diseases, filed 5/23/90.

YDDC/GS 17-14, Written Agreements with Off-site Health Care Providers, filed 5/23/90.

YDDC/GS 17-18, Health Care Direct and Standing Orders, filed 5/23/90.

YDDC/GS 17-22, Authority to Administer Medical Care, filed 5/23/90.

YDDC/GS 17-25 Notification and Treatment of Special Medical Problems, filed 5/23/90.

YDDC/GS 17-30, Screening, Care and/or Referral of Mentally Ill and Mentally Retarded Juveniles to Mental Health Facilities, filed 5/23/90.

BS 67-33, Students Treatment Unit Medical Procedure, filed 5/23/67.

BS 67-38, Professional Services Clinical Case Recording, filed 5/23/67.

BS 67-46; Professional Services Clinical Emergency Medical Procedures, filed 5/23/67.

BS 67-48, Students Treatment Unit Policy Program, filed 5/23/67.

History of Repealed Material:

8 NMAC 14.4, Family Medical Services, filed 11/2/98 - Repealed effective 8/31/2004.

8.14.4 NMAC, Facility Medical and Mental Health Services, filed 8/16/2004 - Repealed effective 8/15/2008.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 5 FACILITY OPERATIONS**

8.14.5.1 ISSUING AGENCY: New Mexico Children, Youth and Families Department.

[8.14.5.1 NMAC - Rp, 8.14.5.1 NMAC, 8/15/2008]

8.14.5.2 SCOPE: This rule applies to clients who are committed to the custody of juvenile justice services pursuant to the Delinquency Act, staff of juvenile justice services of the children, youth and families department and the operators of facilities contracted by CYFD.

[8.14.5.2 NMAC - Rp, 8.14.5.2 NMAC, 8/15/2008]

8.14.5.3 STATUTORY AUTHORITY: NMSA 1978 SECTION 9A-2-7(D) authorizes the secretary of the children, youth and families department to adopt regulations as necessary to carry out the duties of CYFD. NMSA 1978 section 32A-2-19(B) provides that delinquent chil-

dren may be committed to the legal custody of CYFD for placement, supervision and rehabilitation, and more generally NMSA 1978 section 32A-2-1 et seq., the Delinquency Act, contains various provisions relating to the commitment and custody of delinquent children.

[8.14.5.3 NMAC - Rp, 8.14.5.3 NMAC, 8/15/2008]

8.14.5.4 DURATION:
Permanent.

[8.14.5.4 NMAC - Rp, 8.14.5.4 NMAC, 8/15/2008]

8.14.5.5 EFFECTIVE DATE:
August 15, 2008, unless a later date is cited at the end of a section.

[8.14.5.5 NMAC - Rp, 8.14.5.5 NMAC, 8/15/2008]

8.14.5.6 OBJECTIVE: To provide for the operations of juvenile justice service facilities, including facility management, facility operations, and client services.

[8.14.5.6 NMAC - Rp, 8.14.5.6 NMAC, 8/15/2008]

8.14.5.7 DEFINITIONS:

A. Absconder refers to a probationer or parolee who leaves a facility without authorization.

B. Classification refers to an assessment of the client's risk, needs and strengths by which facility staff determine the level of care and management of clients; the system and procedure through which new clients are assessed and assigned to the appropriate facility and living unit.

C. Client refers to a person who is committed to the custody of CYFD's juvenile justice services or who is receiving services from CYFD's juvenile justice services.

D. Contraband refers to any item disallowed by the contraband facility list or law in the possessions or control of a client, visitor, staff member, contractor or other person on the grounds of a CYFD facility.

E. Contract facilities refers to those facilities which contractually operate secure or non-secure facilities for CYFD. These facilities comply with JJS policies and procedures concerning client care.

F. Control center refers to a secure self-contained unit designed to coordinate communications and maintain the security of the facility; staffing and accessibility of the control center ensure that it cannot be commandeered by unauthorized persons.

G. CYFD refers to the New Mexico children, youth and families department.

H. Emergency refers to situations which cause any significant disruption of normal facility or agency procedures, policy, or activity caused by riot, escape, fire, natural disaster, employee or client action, or other serious incident.

I. Emergency response plan refers to a written document that specifies what actions will be taken in the event of an emergency or disaster.

J. Escape refers to a committed client who makes an unauthorized departure from a CYFD juvenile justice services facility.

K. Extension refers to a request made to the district attorney to extend a client's commitment for the purpose of safeguarding the welfare of the client or in the interest of public safety.

L. Facility refers to a facility operated by, or on behalf of, CYFD's juvenile justice services, for purposes of housing and providing care for clients committed to the custody of CYFD.

M. Grievance system refers to systems and procedures available to clients and families to resolve grievances with facility operations and services.

N. Incident reporting and review refers to procedures in place at facilities to report events requiring JJS or CYFD response.

O. Juvenile justice services or JJS refers to the organizational unit within CYFD that operates juvenile justice facilities and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq. (2005).

P. Juvenile parole board refers to the releasing authority of clients committed to the custody of CYFD.

Q. Living unit refers to an area in a CYFD facility where clients are assigned to perform their daily activities and to sleep.

R. Long-term evacuation refers to evacuation of clients from a facility for longer than 6 hours (requiring overnight accommodation) including the transportation of clients and staff away from the state-owned or contracted property.

S. Multi-disciplinary team (MDT) refers to the team that meets at the facility to develop, monitor, and revise client plans for placement and services. The team includes the client and family member(s), and behavioral health, education, medical, a security representative, the juvenile probation and parole officer and a transition coordinator.

T. Non-secure facility refers to a facility where the clients have attained a higher level of trust and responsibility. Clients in these facilities may be attending school or working in the community.

U. Parole refers to the sta-

tus of a client who has been released from a juvenile justice facility before the end of the client's commitment period. This time of release may be also referred to as aftercare.

V. Prohibited material refers to any objects or items given by visitors or staff to a client, which is considered contraband in a CYFD facility.

W. Restraint refers to a system of physical restraint techniques that include but are not limited to CYFD approved methods of manual and mechanical restraints.

X. Secretary refers to the secretary of CYFD.

Y. Secure facility refers to a facility that is either physically or staff-secure. Clients in secure facilities generally do not attend school or work in the community.

Z. Short-term evacuation refers to evacuation of clients from a facility for less than six (6) hours, including transportation of clients away from state-owned or state-leased property.

AA. Special management refers to the behavioral management system with a continuum of services and initiatives designed to manage client's disruptive behaviors in the least restrictive manner.

BB. Staff refers to employee(s) of CYFD.

CC. Superintendent refers to the chief facility administrator for the secure and non-secure centers.

DD. Transition refers to a structured program to help clients make a satisfactory transition after their release. Time limited transition plans are initiated at admission to the facility, updated periodically, and coordinated with community agencies.

EE. Use of force refers to those actions required for justifiable self defense, protection of the client or others, protection of property, and prevention of escapes.

FF. Visitor refers to members of the immediate family (mother, father, step-parents, foster parents, brothers, sisters, spouse, children) and other relatives (grandparents, in-laws).

[8.14.5.7 NMAC - Rp, 8.14.5.7 NMAC, 8/15/2008]

8.14.5.8 BUILDING CODES:

All secure and non-secure facilities conform to applicable federal, state, or local building codes, zoning ordinances, and fire safety codes. Compliance is documented and any variances, exceptions, or equivalencies that do not constitute a serious life safety threat to the occupants of the facility are approved by the appropriate authority.

[8.14.5.8 NMAC - N, 8/15/2008]

8.14.5.9 ORGANIZATION:

All secure and non-secure facilities are organized to provide for staff-client interactions.

[8.14.5.9 NMAC - N, 8/15/2008]

8.14.5.10 FACILITY SIZE AND CAPACITY:

All secure and non-secure facilities provide living units and are occupied in accordance with rated capacity.

[8.14.5.10 NMAC - N, 8/15/2008]

8.14.5.11 ENVIRONMENTAL CONDITIONS:

All secure and non-secure facilities comply with generally accepted standards for lighting, air quality, temperature, and noise levels to preserve the health and well-being of clients and staff and to promote facility order and security.

[8.14.5.11 NMAC - N, 8/15/2008]

8.14.5.12 ADMINISTRATIVE AND STAFF AREAS:

All secure and non-secure facilities provide adequate space for staff to carry out their responsibilities safely and effectively. All parts of the facility that are accessible to the public are accessible to and useable by staff and visitors with disabilities.

[8.14.5.12 NMAC - N, 8/15/2008]

8.14.5.13 CLIENT AREAS:

A. Client areas are organized and furnished to promote the safety and well-being of clients. Clients with disabilities are housed in a manner that provides for their safety and security. Appropriate facility programs and activities are accessible.

B. All secure and non-secure facilities provide adequate indoor and outdoor space and furnishings for program and services. Adequate and appropriate areas are provided for visiting, recreation, and other activities.

C. Facilities have housekeeping and maintenance procedures that conform with sanitation, fire and safety codes, and that maintain hygienic living conditions for clients. Housekeeping and maintenance assignments are not utilized as reward or punishment for clients.

D. Clients do not maintain administrative offices unless the client receives incentive pay in accordance with and at current compensatory rates.

[8.14.5.13 NMAC - Rp, 8.14.5.11 NMAC, 8/15/2008]

8.14.5.14 CLIENT RIGHTS:

All secure and non-secure facilities provide for the safety, security, and constitutional rights of clients, balancing the expression of individual rights and the preservation of facility order. Clients are held accountable for their behavior and due process safeguards are provided. Clients and their families are provided a handbook at intake

which provides an overview of client rights and responsibilities. Client rights and responsibilities are also written and posted in client areas. Clients are not subjected to discrimination based on race, religion, national origin, gender, physical handicap, or political views in program access, work assignments, administrative decisions and other matters.

[8.14.5.14 NMAC - N, 8/15/2008]

8.14.5.15 PROTECTION FROM HARM:

Clients are protected from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment. All instances of child abuse or neglect are reported consistent with appropriate state law or local laws and CYFD policy.

[8.14.5.15 NMAC - N, 8/15/2008]

8.14.5.16 NOTIFICATION:

Notification procedures are in place regarding the reporting of alleged criminal or delinquent acts, abuse and neglect, injury, serious illness or death, escapes, release from custody, media access, issues involving American Indian clients in accordance with ICWA, and foreign nationals.

[8.14.5.16 NMAC - N, 8/15/2008]

8.14.5.17 COMPLAINTS, GRIEVANCES, AND APPEALS:

The client grievance and appeal procedure is written and made available to all clients and families and includes at least one level of appeal. The published process for submitting a grievance is posted in conspicuous places for clients and families in each living unit and common areas. Grievances are transmitted, without alteration, interference, or delay to the party responsible for receipt and investigation. A written report on the final disposition of a grievance is prepared and filed and a copy given to the client.

[8.14.5.17 NMAC - N, 8/15/2008]

8.14.5.18 PROVISION OF SERVICES:

CYFD and its contractors provide services without regard to age, race, ethnicity, gender, religion, national origin, disability, marital status, sexual preference, tribal affiliation or political views. CYFD and its contractors provide services that promote and build on individual and family strengths and are provided in the least restrictive setting. Services are integrated and linked, both within CYFD and with other child-serving agencies, and use peer, family and other appropriate and available supports.

[8.14.5.18 NMAC - N, 8/15/2008]

8.14.5.19 INTERPRETER AND TRANSLATION SERVICES:

CYFD staff and contractors provide equal access to

services and programs for clients and family members, significant to the treatment process, who are limited English proficient (LEP), deaf or hard of hearing, or blind. Interpreter and translation services are provided as needed.

[8.14.5.19 NMAC - Rp, 8.14.5.16 NMAC, 8/15/2008]

8.14.5.20 RECEPTION AND ORIENTATION:

When an adjudicated delinquent client is committed to the custody of CYFD for a term of commitment or a diagnostic evaluation, the client undergoes thorough screening and assessment at admission and receives an orientation to the facility's procedures, rules, programs, and services. CYFD determines the appropriate placement, supervision, and rehabilitation program for the client committed to the custody of CYFD.

[8.14.5.20 NMAC - Rp, 8.14.5.12 NMAC and 8.14.5.9 NMAC, 8/15/2008]

8.14.5.21 REFERRAL, INTAKE, ASSESSMENT AND ORIENTATION TO APPROPRIATE FACILITIES:

Referrals are received and processed to maintain the client in the least restrictive environment. At the recommendation of the client's multi-disciplinary team, a referral will be made to the appropriate facility or program.

[8.14.5.21 NMAC - Rp, 8.14.5.8 NMAC, 8/15/2008]

8.14.5.22 CLASSIFICATION:

Clients are classified at the most appropriate levels of custody and programming both on admission and on review of their status. A written classification plan includes provisions for level of risk presented, the type of housing required, and participation in facility and community programs. The written plan for client classification specifies criteria and procedures for determining and changing the status of a client.

[8.14.5.22 NMAC - Rp, 8.14.5.9 NMAC, 8/15/2008]

8.14.5.23 SOCIAL SERVICES:

Social service programs are available to provide a range of resources appropriate to the needs of clients. Community resources are used, either through referrals for service or by contractual agreement, to provide clients with services to meet their developmental needs as appropriate.

[8.14.5.23 NMAC - N, 8/15/2008]

8.14.5.24 MEDICAL AND BEHAVIORAL HEALTH:

All clients in a facility are provided medical and behavioral health services appropriate for the needs of the client. Medical and behavioral health services are covered by separate policy.

[8.14.5.24 NMAC - N, 8/15/2008]

8.14.5.25 ACADEMIC AND VOCATIONAL EDUCATION:

A. There is a written, standardized, competency-based curriculum supported by appropriate materials and classroom resources.

B. Academic and vocational educational programs are accredited with the state of New Mexico public education department and comply with federal and state mandates governing regular and special education (IDEA) requirements. The state of New Mexico licenses juvenile justice service educational instructors.

C. Programs up to the completion of high school or GED are available at no cost to juveniles and educational programs are consistent with the needs of the client population. Provision is made for formal recognition of specific educational accomplishments.

D. The program is coordinated with other facility programs and services as well as the community.

[8.14.5.25 NMAC - N, 8/15/2008]

8.14.5.26 WORK PROGRAMS:

Facilities provide work opportunities for clients consistent with client needs and facility security. All applicable federal, state, and local laws are adhered to. The use of work does not interfere with educational and treatment programs.

[8.14.5.26 NMAC - Rp, 8.14.5.15 NMAC, 8/15/2008]

8.14.5.27 LIBRARY IN SECURE FACILITIES:

Clients have access to a comprehensive collection of general and specialized reference materials that meet educational, recreational and legal needs.

[8.14.5.27 NMAC - N, 8/15/2008]

8.14.5.28 RECREATION AND ACTIVITIES:

All secure and non-secure facilities have a coordinated and supervised recreation program for clients. The program includes indoor and outdoor recreation; leisure time activities; facilities and equipment; community interaction; and activities initiated by clients and is supervised by trained and qualified staff member.

[8.14.5.28 NMAC - Rp, 8.14.5.19 NMAC, 8/15/2008]

8.14.5.29 FUNDRAISING:

Facilities and units within facilities are allowed to have approved fundraising activities that benefit the clients of that facility or unit. Fundraising activities are not allowed for the benefit of non-clients.

[8.14.5.29 NMAC - N, 8/15/2008]

8.14.5.30 RELIGIOUS PRO-

GRAMS: All secure and non-secure facilities provide for religious programs and services for clients that reflect clients' traditions and beliefs and adequate space is available. Clients participate voluntarily in practices of their religious or spiritual faith that are deemed essential by the faith's judiciary, limited only by safety concerns. Clients are not punished, disciplined or discriminated against for participation or non-participation in religious or spiritual activities.

[8.14.5.30 NMAC - Rp, 8.14.5.17 NMAC, 8/15/2008]

8.14.5.31 MAIL, TELEPHONE, VISITING:

Clients have the right to communicate or correspond with persons or organizations subject only to the limitations necessary to maintain facility order and security, and the health and safety of clients and staff. Procedures govern the facility's mail, telephone, and visiting services for clients, including mail inspection, access to publications, public phone use, and routine and special visits.

[8.14.5.31 NMAC - Rp, 8.14.5.18 NMAC, 8/15/2008]

8.14.5.32 FACILITY RECORDS MANAGEMENT:

All secure and non-secure facilities maintain client files in a uniform manner.

[8.14.5.32 NMAC - Rp, 8.14.5.27 NMAC, 8/15/2008]

8.14.5.33 PERMANENT LOG:

Facility staff maintains a permanent log that records all activity, including emergencies, routine events, all comings and goings, client activities, and staffing for every shift. Staff prepare shift reports that record this information.

[8.14.5.33 NMAC - Rp, 8.14.5.22 NMAC, 8/15/2008]

8.14.5.34 PATROLS AND INSPECTIONS:

All areas and security devices of secure and non-secure facilities are inspected on a regular basis and inspections are documented. Any identified repairs or maintenance are scheduled and performed.

[8.14.5.34 NMAC - N, 8/15/2008]

8.14.5.35 CLIENT COUNT:

CYFD has a system for physically counting clients and for detecting and reporting absconders. The system includes strict accountability for clients assigned to work and educational release, furloughs, and other approved temporary absences.

[8.14.5.35 NMAC - Rp, 8.14.5.23 NMAC, 8/15/2008]

8.14.5.36 ESCAPES: Facilities maintain an abscond and escape response

plan and procedures that are reviewed annually and updated as necessary. Clients that abscond or escape are reported immediately to the legal guardian, superintendent, the JPPO if on probation or parole, state police and local law enforcement and CYFD's public information officer.

[8.14.5.36 NMAC - Rp, 8.14.5.26 NMAC, 8/15/2008]

8.14.5.37 SECURITY SYSTEMS:

All secure and non-secure facilities are organized to support the orderly and secure functioning of the facility. Secure facilities have continually staffed control centers with communication systems sufficient for an emergency. Non-secure facilities are controlled by appropriate means to provide that clients are safe and to prevent access by the general public without proper authorization.

[8.14.5.37 NMAC - Rp, 8.14.5.21 NMAC, 8/15/2008]

8.14.5.38 SECURITY, SUPERVISION, AND CONTROL:

All secure and non-secure facilities use a combination of supervision, inspection, accountability, and clearly defined policies and procedures on use of security to promote safe and orderly operations.

[8.14.5.38 NMAC - Rp, 8.14.5.33 NMAC, 8/15/2008]

8.14.5.39 STAFFING:

Staff are assigned and located to provide for client access, client safety, and response to emergency situations. Best practice staff-to-client ratios are maintained.

[8.14.5.39 NMAC - Rp, 8.14.5.20 NMAC, 8/15/2008]

8.14.5.40 CLIENT MOVEMENT:

Staff monitor and regulate client movement in and out of the facility. Staff provide for transport in accordance with established procedures for secure facility transportation and non-secure facility transportation. Transportation procedures provide for client safety and public safety.

[8.14.5.40 NMAC - Rp, 8.14.5.23 NMAC, 8/15/2008]

8.14.5.41 USE OF RESTRAINTS:

A. Instruments of restraint, such as handcuffs, leg irons, and straight-jackets, are never applied as punishment and are applied only with the approval of the facility administrative officer or designee. Use is restricted to justifiable self defense, protection of the client or others, protection of property, and prevention of escapes. Restraints will never be used during childbirth and waist restraints will not be used on pregnant clients.

B. Juvenile justice servic-

es facility staff use only agency approved physical restraint techniques that include but are not limited to CYFD approved methods of manual and mechanical restraints. JJS staff are trained on the use of mechanical restraints prior to receiving authorization from the superintendent or designee to use the restraints.

[8.14.5.41 NMAC - Rp, 8.14.5.11 NMAC, 8/15/2008]

8.14.5.42 USE OF FORCE:

A. Juvenile justice services protects and promotes the rights of each client, including the right to be free from physical or mental abuse, corporal punishment and any physical restraints or seclusion imposed for the purposes of discipline for convenience.

B. Use of force is restricted to justifiable self defense, protection of the client or others, protection of property, and prevention of escapes. The amount of force is limited to that minimally necessary to control the situation. Force is not used as punishment or to demonstrate authority. Staff are required to attend restraint training and periodic refresher training.

C. CYFD manages clients in safety-sensitive situations, based on principles of behavior management. Behavior management principles include applying the least restrictive means appropriate to control the situation, and de-escalation.

[8.14.5.42 NMAC - Rp, 8.14.5.11 NMAC, 8/15/2008]

8.14.5.43 SPECIAL MANAGEMENT: CYFD provides a behavioral management system with a continuum of services and initiatives designed to manage client's disruptive behaviors in the least restrictive manner.

[8.14.5.43 NMAC - Rp, 8.14.5.12 NMAC, 8/15/2008]

8.14.5.44 RULES AND DISCIPLINE: All secure and non-secure facilities have written rules of conduct, sanctions, and procedures for violations that are communicated to all clients and staff. Disciplinary procedures are carried out promptly and with respect for due process. All secure and non-secure facilities have a system of rewarding positive behavior.

[8.14.5.44 NMAC - Rp, 8.14.5.13 NMAC, 8/15/2008]

8.14.5.45 DISCIPLINARY REPORTS AND HEARINGS: Discipline reports are prepared when there is reasonable belief that a client has committed a major rule violation or reportable minor violation. The client is fully informed of the report and participates in a hearing process. Due process is provided and clients may

appeal decisions.

[8.14.5.45 NMAC - Rp, 8.14.5.14 NMAC, 8/15/2008]

8.14.5.46 SERIOUS INCIDENT REPORTING: Serious incidents that compromise the safety, security or emotional well being of clients, staff, or visitors or endangers the public are immediately reported to superintendents, juvenile justice services authorities, and designated CYFD authorities. Serious incident reports do not involve disciplinary action by CYFD but may be subject to external review.

[8.14.5.46 NMAC - N, 8/15/2008]

8.14.5.47 GANG MANAGEMENT: Juvenile justice services provides for and engages clients in pro-social skills development programs and services that work toward diminishing and eliminating gang involvement.

[8.14.5.47 NMAC - Rp, 8.14.5.39 NMAC, 8/15/2008]

8.14.5.48 CONTROL OF CONTRABAND:

A. Searches of facilities, clients, and visitors are conducted to control contraband, provide for its disposition, and to maintain safe and drug-free facilities. Searches are conducted at a level commensurate with security needs.

B. Client body cavity searches are conducted only in secure facilities by qualified medical staff of the same gender and when there is a reasonable belief that the client is carrying contraband or other prohibited material, and with the approval of the superintendent or designee.

C. The preservation, control, and disposition of physical evidence obtained through any search is consistently maintained whenever physical evidence is present as a result of a violation of law.

[8.14.5.48 NMAC - Rp, 8.14.5.25 NMAC, 8/15/2008]

8.14.5.49 SECURITY EQUIPMENT: The availability and use of chemical agents and related security devices are controlled and level of authority required for their access and use is specified. Chemical agents are used only with the authorization of the superintendent or designee.

[8.14.5.49 NMAC - Rp, 8.14.5.11 NMAC, 8/15/2008]

8.14.5.50 USE OF VEHICLES: State vehicles are driven only by authorized drivers and occupied by authorized passengers, and only in the furtherance of official state business. Procedures are in place that govern the use of personal vehicles for official purposes and include provision for

insurance coverage.

[8.14.5.50 NMAC - N, 8/15/2008]

8.14.5.51 SAFETY AND EMERGENCY PROCEDURES:

A. All secure and non-secure facilities adhere to applicable safety and fire codes and have in place the equipment and procedures to respond in the event of an emergency.

B. Facilities maintain written emergency and evacuation plans and train staff in implementation. Superintendents or designees have the authority to implement emergency and evacuation plans.

C. As part of evacuation planning, facilities make arrangements in advance for housing clients during short-term and long-term evacuation. Procedures are in place, with back-up, for the immediate release of clients from locked areas in case of emergency.

[8.14.5.51 NMAC - Rp, 8.14.5.28 NMAC, 8/15/2008]

8.14.5.52 EMERGENCY POWER AND COMMUNICATION AND FIRE SAFETY:

A. All secure and non-secure facilities have access to an alternate power source to maintain essential services in an emergency.

B. Facilities have a communication system available for internal and external communications for use in the event of urgent, special, or unusual incidents or emergencies.

C. Each facility has fire prevention regulations and practices. These include provision for an adequate fire protection service, including but not limited to a system of fire inspection and testing of equipment at least quarterly with written reports and testing documentation; an annual inspection by local or state officials or other qualified person(s); fire drills; and the availability of fire protection equipment at appropriate locations throughout the facility.

D. Systems and equipment are regularly inspected, tested, and certified by appropriate authorities.

[8.14.5.52 NMAC - Rp, 8.14.5.30 NMAC and 8.14.5.32 NMAC, 8/15/2008]

8.14.5.53 PAROLE: The Children's Code is followed regarding parole.

[8.14.5.53 NMAC - Rp, 8.14.5.10 NMAC, 8/15/2008]

8.14.5.54 EXTENSION: A request for extension of a commitment may be made to the district attorney for the purpose of safeguarding the welfare of the

client or in the interest of public safety.
[8.14.5.54 NMAC - N, 8/15/2008]

8.14.5.55 TRANSITION: The facility provides a structured program to help clients make a satisfactory transition after their release. Time limited transition plans are initiated at admission to the facility, updated periodically, and coordinated with community agencies. Systems of graduated release are in place.
[8.14.5.55 NMAC - Rp, 8.14.5.10 NMAC, 8/15/2008]

8.14.5.56 COMMUNITY FACILITY PROGRAMS: Community facility programs provide non-secure congregate care to clients who require psychological or emotional treatment in a group home or residential treatment center in accordance with licensing requirements for child and adolescent mental health facilities or to clients as a step-down from a secure facility.
[8.14.5.56 NMAC - N, 8/15/2008]

HISTORY OF 8.14.5 NMAC:

Pre-NMAC History: The material in this part replaces the material that was previously filed with the State Records Center under:

DDC/GS 10-60, Special Leave of Absences for Juveniles, filed 5/23/90.
YDDC/GS 15-01, Equal Opportunities for Juveniles Programs, filed 5/23/90.
YDDC/GS 06-20, Participation in Religious Programming, filed 5/23/90.
YDDC/GS 06-21, Provision of Staff and Resources for Religious Program, filed 5/23/90.
YDDC/GS 08-02, Classification for Reintegration Center Transfers, filed 5/23/90.
YDDC/GS 08-10, Classification of Juveniles with Special Needs, filed 5/23/90.
YDDC/GS 08-11, Juvenile Releases, filed 5/23/90.
BS 67-19, Boys Personal Property, filed 5/23/67.
BS 67-23, Students Supervision, filed 5/23/67.
BS 67-45, Students Personal Property, filed 5/23/67.
BS 67-49, Organization and Management Policy Cigarette and Candy Issue, filed 5/23/67.
BS 67-53, Students Notification of Parents Change of Status, filed 8/16/67.
BS 67-54, Students On-Campus Group Work, filed 9/5/67.
YDDC/GS 07-05, Escape Plans, filed 5/23/90.
YDDC/GS 07-06, Emergency and Evacuation Plans, filed 5/23/90.
YDDC/GS 07-14, Disturbance, Riots and Hostage Situations, filed 5/23/90.
YDDC/GS 07-20, Bomb Threats, filed

5/23/90.
BS 67-15, Administrative Morning Report, filed 5/23/67.
BS 67-16, Charting Procedure, filed 5/23/67.
BS 67-27, Security, filed 5/23/67.
BS 67-40, Students Concerning Reports to the Administration Regarding Runaways, filed 5/23/67.
BS 67-41, Students Procedure for the Cooperative Search and Apprehension of New Mexico Boys School Runaways, filed 5/23/67.
BS 67-43, Students Work Pass Policy, filed 5/23/67.
BS 67-47, Organization and Management Policy Institutional Safety Inspection, filed 5/23/67.
BS 67-57, Students Procedure for the Cooperative Search and Apprehension of New Mexico Boys School Runaways, filed 11/13/67.
BS 67-22, Students Discipline, filed 5/23/67.
DDC/GS 10-11, Mail Regulations, filed 5/23/90.
YDDC/GS 10-12, Resident Telephone Regulations, filed 5/23/90.
YDDC/GS 10-50, Visiting on Grounds with Residents, filed 5/23/90.
BS 67-29, Students Parents Visiting Lodges, filed 5/23/67.
BS 67-50, Undated, Students Visiting, filed 5/23/67.
BS 67-56, Communications Mail, filed 9/18/67.

History of Repealed Material:

8 NMAC 14.3, Facility Programs, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.5, Facility Food Service, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.6, Facility Safety and Security, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.7, Facility Rules and Discipline, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.8, Clients' Access to Communication, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.9, Facility Sanitation and Hygiene, filed 11/2/98 - Repealed effective 12/30/2005.
8.14.5 NMAC, Facility Operations, filed 12/16/2005 - Repealed effective 8/15/2008.

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 5 UPLAND GAME**

19.31.5.1 ISSUING AGENCY: New Mexico Department of Game and Fish.
[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 8-14-2008]

19.31.5.2 SCOPE: Hunters of Upland Game. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.
[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 8-14-2008]

19.31.5.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.
[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 8-14-2008]

19.31.5.4 DURATION: August 14, 2008-March 31, 2010.
[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 8-14-2008]

19.31.5.5 EFFECTIVE DATE: August 14, 2008 unless a later date is cited at the end of individual sections.
[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 8-14-2008]

19.31.5.6 OBJECTIVE: Establishing seasons on blue grouse, lesser prairie-chicken, pheasant, Gambel's quail, Montezuma quail, northern bobwhite, scaled quail, Abert's squirrel, red squirrel, and setting falconry seasons.
[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 8-14-2008]

19.31.5.7 DEFINITIONS:
A. "Area GS-1" (GS-1) shall mean the area bounded by the following: beginning at the New Mexico-Colorado border at NM 551, south on NM 551 to U.S. 64/87, west on U.S. 64/87 to I-25, south on I-25 to U.S. 285, south on U.S. 285 to N.M. 41, south on N.M. 41 to U.S. 60, west on U.S. 60 to I-25, north on I-25 to N.M. 550, northwest on N.M. 550 to the

southeastern border of the Jicarilla Apache Indian reservation, north on the Jicarilla Apache Indian reservation border to the New Mexico-Colorado border, east to I-25.

B. "Area GS-1-experimental" (GS-1E) shall mean the area bounded by the following: beginning in Santa Fe at the U.S. 285/I-25 intersection, north on I-25 to N.M. 518, north on N.M. 518 to N.M. 75, west on N.M. 75 to N.M. 68, south on N.M. 68 to U.S. 285, and south on U.S. 285 to I-25.

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

D. "Area S-3" (S-3) shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 54, north on U.S. 54 to U.S. 285, south on U.S. 285 to the New Mexico-Texas border, east to U.S. 54.

E. "Area S-4" (S-4) shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at Four-corners south to I-40; east on I-40 to I-25; north on I-25 to N.M. 550; northwest on N.M. 550 to the southern reservation boundary of the Jicarilla Apache reservation; north and west along the western reservation boundary to the New Mexico-Colorado border; west along the New Mexico-Colorado border to the four-corners.

F. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

G. "Bag limit" shall mean the number of upland game animals a licensed hunter is allowed per day.

H. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take upland game birds or mammals.

I. "Bow" shall mean compound, recurve, long bow, or crossbow. Sights on bows shall not project light nor magnify.

J. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

K. "Department" shall mean the New Mexico department of game and fish.

L. "Department offices" shall mean department offices in Santa Fe,

Albuquerque, Raton, Las Cruces, or Roswell.

M. "Director" shall mean the director of the New Mexico department of game and fish.

N. "Established road" is defined as follows:

(1) a road, built or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

O. "Falconry" shall mean hunting upland game using raptors.

P. "Lesser prairie-chicken hunting area (LPC area)" shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 60, south along the New Mexico-Texas border to U.S. 380, west on U.S. 380 to the Pecos river, north along the Pecos river to U.S. 60, east to the New Mexico-Texas border, including all lesser prairie-chicken management areas and the Sandhills Prairie conservation area owned by the state game commission.

Q. "License year" shall mean the period from April 1 through March 31.

R. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

S. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

T. "Non-toxic shot" shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

U. "Permanent mobility limitation" shall mean an individual that permanently has: restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations.

V. "Possession limit"

shall mean twice the daily bag limit one can have in their ownership, except where otherwise defined.

W. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

X. "Retention" or "retain" shall mean the holding of in captivity.

Y. "State game commission owned properties" shall mean all department owned or managed waterfowl management areas, wildlife management areas, Sandhills Prairie conservation area and lesser prairie-chicken areas.

Z. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

AA. "Waterfowl management area (WMA)" shall mean Bernardo, Brantley, Casa Colorada, Charette Lake, Jackson Lake, La Joya, McAllister Lake, Salt Lake, Seven Rivers, Tucumcari, and W.S. Huey state game commission owned or managed waterfowl management areas.

BB. "Wildlife management area" shall mean Big Hatchet, Colin Neblett, E.S. Barker, Humphries, Marquez, Rio Chama, Sargent, Socorro-Escondida, and Water Canyon wildlife management areas, the Sandhills Prairie conservation area, and state game commission owned lesser prairie-chicken areas.

CC. "Youth" shall mean those less than 18 years of age except where otherwise defined.

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-14-2008]

19.31.5.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt blue grouse, pheasant, quail, and squirrel without having purchased a valid license for the current license year. Valid licenses for upland game hunting are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or junior or senior small game and fishing, or non-resident small game, and temporary small game 4-day licenses. A habitat stamp is required for those hunting on US forest service and bureau of land management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation

except for resident 100% disabled veterans.

(1) For blue grouse hunting: in addition to a valid license, a free blue grouse permit obtained from department offices or website shall be required.

(2) For lesser prairie-chicken hunting and falconry prairie-chicken hunting: in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For pheasant hunting on Casa Colorado and Seven Rivers youth-only, Casa Colorado, Seven Rivers and W.S. Huey WMAs: in addition to a valid license, a special permit obtained by drawing shall be required.

(4) For pheasant hunting on private lands in Valencia county: in addition to a valid license, a Valencia county landowner pheasant permit shall be required.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Applications: Applications for upland game special permits shall be submitted on the appropriate application form or via the department website.

(1) For permits issued by drawing, an eight-dollar application fee shall be required by each applicant per application submitted.

(2) No more than four persons may apply per application.

(3) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(4) Applications may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

(5) Applicants may apply for a first, second and third choice of seasons if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(6) All applications must be mailed to the Santa Fe office or submitted via the Department website unless otherwise specifically allowed by rule. Persons desiring a Valencia county landowner pheasant hunt permit must obtain an application from registered landowners. Applications must be submitted in person to only the Northwest Area (Albuquerque) office. Applications for the Valencia county landowner pheasant hunt permits may be submitted up to the day prior to the hunt.

(7) The application deadline date for lesser prairie-chicken shall be the second Wednesday in September. The applica-

tion deadline for Casa Colorado youth-only, Seven Rivers youth-only, Casa Colorado, Seven Rivers and W.S. Huey WMAs pheasant hunts shall be the first Wednesday in November.

(8) If applications for permits exceed the number of available permits, permits shall be allotted by means of a random public drawing.

(9) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-14-2008]

19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:

A. Season and hours: Upland game may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills Prairie conservation area hunting hours shall be from one-half hour before sunrise to sunset.

(2) On waterfowl management areas (WMA)s, hunting hours shall be from one-half hour before sunrise to 1:00 p.m. For the special permit pheasant hunts on the Seven Rivers WMA, W.S. Huey WMA and the Seven Rivers WMA youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4pm.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation.

C. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any upland game that are illegally obtained.

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any upland game, other than quail on private property, by use of bait. It shall be lawful to take quail from areas where quail feeders occur on private property.

E. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any upland game.

F. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any upland game.

G. Killing out-of-season: It shall be unlawful to kill any upland game out-of-season.

H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for pheasants, quail, and lesser prairie chickens:

(a) shotguns firing shot, including muzzle-loading shotguns;

(b) bows and arrows; and

(c) crossbows for individuals that qualify with a permanent mobility limitation.

(2) The following are legal sporting arms for blue grouse, Abert's squirrels, and red squirrels:

(a) shotguns firing shot, including muzzle-loading shotguns ;

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows and arrows; and

(e) crossbows for individuals that qualify with a permanent mobility limitation.

(3) Non-toxic shot: is required for hunting on all state game commission owned lands. It shall be unlawful for any person hunting with a shotgun or muzzle-loader on state game commission owned properties, to hunt with or be in possession of lead shot, or shotgun shells loaded with lead shot.

I. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

J. Proof of species or sex:

(1) One foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or storage facility.

(2) The head or a leg of each pheasant taken must remain attached to the bird until the bird has arrived at the personal abode of the possessor or storage facility.

K. Possession or sale of protected species: It shall be unlawful to possess, sell, or offer for sale all or part of any upland game except as provided below:

(1) License or permit: A person may possess upland game or parts thereof that they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any upland game or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the upland game, or parts thereof, and which shall contain the following:

(a) the kind and number of upland game parts donated;

(b) the date and county where the upland game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the upland game was lawfully taken;

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain upland game in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those species listed on the permit;

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected upland game being transported.

(4) Sale of game animal parts: Only skins, claws or feathers of legally taken upland game may be bartered or sold. The disposer must supply to the recipient a written statement which shall contain the following:

(a) description of the skin, claws, or feathers involved;

(b) the date and county where the upland game was taken;

(c) the disposer's name, address and hunting license number under which the upland game was taken;

(d) the date and place of the transaction.

L. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any upland game, without first obtaining a permit from the department of game and fish.

M. Use of vehicles and roads in hunting upland game:

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any upland game on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any upland game from within a motor vehicle, power boat, sailboat, or aircraft.

(3) Harassing protected wildlife: It shall be unlawful, at any time, to pursue, harass, harrass, drive, or rally any upland game by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) Vehicle off of established road: During the seasons established for

upland game, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) All landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any upland game, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill upland game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take squirrels or upland game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any upland game animal which has clearly been wounded by the licensed mobility impaired hunter.

N. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt upland game, camp, or trespass upon state game commission owned lands unless allowed under regulation.

(4) State waterfowl management areas and wildlife management areas open, species that can be hunted, and days open for hunting: Use of vehicles will be restricted to designated areas.

(a) The William S. Huey WMA and Seven Rivers WMA shall be open for

the following purposes:

(i) quail hunting only on Monday, Wednesday, and Saturday during established seasons;

(ii) pheasant hunting by special permit only;

(b) The Brantley WMA (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for quail and pheasant, during established seasons.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, Elliot S. Barker, and Socorro-Escondida wildlife management areas, and the Sandhills Prairie conservation area shall be open for hunting upland game during established seasons.

(d) The Lesser prairie-chicken management areas shall be open to hunt lesser prairie-chicken and quail during established seasons.

(e) The Big Hatchet mountain wildlife management area shall be open for quail hunting during established seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only hunting for upland game during established seasons.

O. Areas closed to upland game hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All state game commission owned or managed properties.

(2) Rio Grande wild and scenic river area.

(3) Sub-Unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-14-2008]

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

2008-2009 seasons: all dates are 2008 and 2009 unless otherwise specified:

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG LIMIT
Blue grouse	GS-1	Sept. 1-Oct. 15	3
	GS-1E	Aug. 23-Oct. 19, 2008 and Aug. 22-Oct. 18, 2009	
Lesser prairie-chicken (Special draw permit required)	GS-2	Oct. 1-31	
	LPC hunt area	Nov. 22-30, 2008 and Nov. 21-29, 2009	2 (2 per season)
Pheasant	statewide, excluding Valencia county	Dec. 11-14, 2008 and Dec. 10-13, 2009	3 (males)
Youth-only pheasant hunt (Special draw permit required)	Casa Colorada & Seven Rivers WMAs	Dec. 6, 2008 and Dec. 5, 2009	3 (males)
Pheasant (Special draw permit required)	Casa Colorada, Seven Rivers, & W.S. Huey WMAs	Dec. 13, 2008 and Dec. 12, 2009	3 (males)
Pheasant (Valencia Co.) (Landowner Permit Required)	Valencia county private lands	Dec. 13, 2008 and Dec. 12, 2009	3 (males)
Quail: Gambel's, scaled, Northern bobwhite and Montezuma (Mearn's)	Statewide	Nov. 15 - Feb. 15, 2009 and Nov. 14 - Feb. 14, 2010	15 (singly or in aggregate; no more than 5 shall be Mearn's)
Abert's and red s quirel	GS-1	Sept. 1-Oct. 31	8 (singly or in aggregate)
	GS-1E	Aug. 23-Oct. 31, 2008 and Aug. 22-Oct. 31, 2009	
	GS-2	Oct. 1-Nov. 30	
	S-3	Sept. 1-Oct. 31	
	S-4	Sept. 1-Oct. 31	

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-14-2008]

19.31.5.11 LESSER PRAIRIE-CHICKEN PERMITS, HUNT CODE, AND REQUIREMENTS:

- A. Up to 50 lesser prairie-chicken hunt special permits, hunt code LPC-0-001, may be allocated by drawing.
- B. Up to 5 falconry lesser prairie-chicken permits, hunt code LPC-6-002, may be allocated by drawing.
- C. Daily bag limit for lesser prairie-chicken shall be 2 birds daily with a 2 bird season limit.
- D. Hunters participating in the lesser prairie-chicken season are required to submit a harvest report. Those that do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a lesser prairie-chicken permit the following year.
- E. The director with the verbal concurrence of the state game commission chairman or his designee may adjust the number of permits up or down or cancel the hunt to address significant changes in population numbers or habitat availability.

[19.31.5.11 NMAC - N, 8-14-2008]

19.31.5.12 HUNT CODES AND PERMIT NUMBERS FOR CASA COLORADA AND SEVEN RIVERS YOUTH-ONLY PHEASANT HUNTS, CASA COLORADA, SEVEN RIVERS AND W.S. HUEY WMA PHEASANT HUNTS AND THE VALENCIA COUNTY LANDOWNER PHEASANT HUNT:

Special permit pheasant hunts will be allocated by season as follows:

- A. 2008 and 2009 seasons:

Season Dates	Hunt Code	Hunt Location	No. of permits
Dec. 6, 2008 and Dec. 5, 2009	PHE-0-001	Youth-only Casa Colorada WMA	15
Dec. 6, 2008 and Dec. 5, 2009	PHE-0-002	Youth-only Seven Rivers WMA	40
Dec. 13, 2008 and Dec. 12, 2009	PHE-0-003	Casa Colorada WMA	10
Dec. 13, 2008 and Dec. 12, 2009	PHE-0-004	Seven Rivers WMA	65
Dec. 13, 2008 and Dec. 12, 2009	PHE-0-005	W.S. Huey WMA	40
Dec. 13, 2008 and Dec. 12, 2009	PHE-0-006	Valencia county landowner permits	Unlimited

B. Hunters may possess a Valencia county landowner permit in addition to another special permit pheasant hunt. [19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-14-2008]

19.31.5.13 FALCONRY SEASONS:

A. Open areas and season dates: 2008 and 2009 license year seasons, all dates are 2008 and 2009 unless otherwise specified.

(1) The season for blue grouse, pheasants, quail, Abert's squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28, 2009 and September 1, 2009 through February 28, 2010.

(2) The season for lesser prairie-chicken shall be in the designated hunt area, and shall be open December 1-15. A permit issued by drawing is required.

B. Daily bag and possession limits:

(1) Daily bag limits for blue grouse, pheasant, and quail shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate). Possession limits shall be: blue grouse-6; pheasant-6; quail-30 (singly or in the aggregate); Abert's and red squirrel-16 (singly or in the aggregate).

(2) Daily bag limit for lesser prairie-chicken shall be 2 birds daily with a 2 bird season limit.

C. Provisions for possession: The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert's and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those upland game species listed herein that were legally taken during the open falconry season. [19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-14-2008]

**NEW MEXICO GENERAL SERVICES DEPARTMENT
TRANSPORTATION SERVICES DIVISION**

1.5.3 NMAC, Administration and Use of State Vehicles (filed 10/01/2002) repealed 08-14-08.

**NEW MEXICO GENERAL SERVICES DEPARTMENT
TRANSPORTATION SERVICES DIVISION**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY MANAGEMENT
PART 3 ADMINISTRATION AND USE OF STATE VEHICLES**

1.5.3.1 ISSUING AGENCY: General Services Department, Transportation Services Division. [1.5.3.1 NMAC - Rp, 1.5.3.1 NMAC, 08-14-08]

1.5.3.2 SCOPE:
A. This rule applies to all public agencies that use state vehicles.
B. This rule also applies to the legislative and judicial branches, public schools, and institutions of higher education to the extent that they lease motor pool vehicles from the state central fleet authority (SCFA). [1.5.3.2 NMAC - Rp, 1.5.3.2 NMAC, 08-14-08]

1.5.3.3 STATUTORY AUTHORITY: NMSA 1978 Sections 15-8-6 and 15-8-10. [1.5.3.3 NMAC - Rp, 1.5.3.3 NMAC, 08-14-08]

1.5.3.4 DURATION :

Permanent. [1.5.3.4 NMAC - N, 08-14-08]

1.5.3.5 EFFECTIVE DATE: August 14, 2008 unless a later date is cited at the end of section. [1.5.3.5 NMAC - Rp, 1.5.3.5 NMAC, 08-14-08]

1.5.3.6 OBJECTIVE: The purpose of this rule is to implement the Transportation Services Act, NMSA 1978 chapter 15, article 8, by establishing standards and procedures for the administration and use of state vehicles by state agencies. [1.5.3.6 NMAC - Rp, 1.5.3.6 NMAC, 08-14-08]

1.5.3.7 DEFINITIONS: In addition to the definitions in NMSA 1978 Section 15-8-3, as used in this rule:

A. account manager means a TSD employee designated to prepare, manage and enforce short-term and long-term TSD/SCFA vehicle leases; serve as liaison for designated state agency authorized drivers and TSD/SCFA maintenance personnel; prepare monthly billings and utilization reports, etc;

B. agency fleet coordinator means the individual assigned by an agency head or designee who is responsible for providing fleet management information and reports to TSD;

C. alternative fuel means a fuel other than an unleaded gasoline such as E-85, a blend of ethanol and unleaded gasoline; bio-diesel; electricity; compressed natural gas; propane; hydrogen; etc;

D. authorized driver means:

(1) a state employee holding a valid New Mexico driver's license and a TSD approved defensive driving certificate who is permitted to use a state vehicle in furtherance of official state business; a valid New Mexico driver's license **does not**

include provisional, limited, restricted or administrative permits;

(2) for those candidates for full-time, term or temporary employment with the state of New Mexico that live out-of-state, the following process is required:

(a) prior to a determination of employment, the candidate must provide the agency and TSD with a current copy of their drivers' license record - at their expense- from the state where they reside to assure that the drivers' license is clean and clear of any current DUI, suspension or revocation;

(b) if the license is clean, the individual may be considered for employment by the agency and if hired shall take the NSC/DDC offered by a certified NSC/DDC state instructor to become certified to operate a state vehicle;

(c) once gainfully employed by the state, the out-of-state employee must provide a copy of his driving record to TSD on an annual basis to assure the drivers' license is in good standing; and,

(d) if the license is not clear, a determination to choose not to hire the candidate by the agency may be in order;

(3) Chapter 66, Article 3, Section 301, Subsection B of the NMSA 1978 stipulates that "any person gainfully employed within the boundaries of this state for a period of thirty days or more within a sixty-day period shall be presumed to be a resident of this state;" therefore, any state employee previously living out-of-state who is gainfully employed by the state of New Mexico and resides within the state of New Mexico for more than thirty days must have a valid drivers' license from the state of New Mexico to operate a state vehicle;

E. authorized passenger means an individual who is permitted to occupy a state vehicle in furtherance of official state business or a person who has received prior authorization from the director to occupy a state vehicle; the director

will provide upon request blanket approvals for those agencies that regularly transport passengers in the furtherance of official state business; the term for blanket approvals shall not exceed six months;

F. CAFE standards mean the national highway traffic safety administration corporate average fuel economy standards for passenger vehicles and light trucks;

G. commute means domicile-to-duty privilege authorized by a cabinet secretary or agency head to state authorized drivers where it is in the state's best interest to allow these employees to use a state vehicle to and from work and residence; (refer to 1.5.3.20 NMAC, AUTHORIZATION TO COMMUTE)

H. custody (of a state vehicle) means the director's right to exercise final decision-making authority with respect to the purchase, title and registration, use, administration, operation, maintenance, replacement, and disposal of a state vehicle in accordance with state law and regulations;

I. declared gross vehicle weight or DGVW means the maximum weight of a vehicle; the DGVW is used to differentiate between light, medium or heavy duty vehicle utilization;

J. department means the general services department;

K. director means the director of the transportation services division of the general services department;

L. division means the transportation services division of the general services department;

M. DOT means the department of transportation;

N. DPS means the department of public safety;

O. EMNRD means the energy minerals and natural resources department;

P. flex fuel vehicle means a vehicle that has the capacity of burning a regular unleaded gasoline and an alternative fuel;

Q. DGF means the department of game and fish;

R. GSD means the general services department;

S. G-series license plate means a distinctive government license plate issued by the taxation and revenue department for vehicles of institutions of higher learning, public schools and all other subdivisions of government (cities, counties, villages, conservancy, wastewater, landfill districts, etc.), excluding any state level agency (see definition FF); state vehicles of the executive, legislative or judicial branches will display G-series license plates until replaced by SG license plates through attrition;

T. New Mexico driver's license means a valid driver's license issued by the motor vehicle division of the NM taxation and revenue department; this does not include provisional, limited, restricted, or any court-ordered restricted or administrative license or permit; an "H" restriction may allow an individual to operate their privately owned vehicle (POV) to and from employment; TSD will not authorize an individual to operate a state vehicle with anything other than a valid drivers' license with no limitations or restrictions;

U. public agency means an agency other than a state agency as defined in Sub-section Z of this section authorized to use SCFA vehicles;

V. RMD means the risk management division of the general services department;

W. SCFA means the state central fleet authority of the transportation services division of the general services department;

X. secretary means the cabinet secretary of the New Mexico general services department;

Y. special-use vehicles means state vehicles designated as such by the director, including but not limited to emergency and law enforcement vehicles, buses, tractors, boats, trailers, snow cats, vehicles of a special design or construction that effectively limits their use for a particular purpose, and all other vehicles that are not passenger vehicles;

Z. state agency means a state department, agency, board or commission, including the legislative and judicial branches, but not including public schools and institutions of higher learning; this definition includes any public agency authorizing an officer or employee use of a state vehicle;

AA. state employee means any person who has been elected to, appointed to, or hired for any state office and who receives compensation in the form of salary or is eligible for per diem and mileage reimbursement;

BB. state vehicle means an automobile, van, sport-utility truck, pickup truck or other vehicle with a declared gross vehicle weight of less than ten thousand (10,000) pounds used by a state agency to transport passengers or property;

CC. state of New Mexico government license plate means an SG license plate designed for the specific use of agencies of the executive, legislative and judicial branches of state government for vehicles marked as required by Section 15-8-6 NMSA 1978: this **does not include** institutions of higher learning, public schools or any other political subdivision of government;

DD. street license plate

means a regular passenger license plate issued to a state vehicle which is in the custody of a state agency and can be traced to that state agency;

EE. transportation services division or TSD means the transportation services division of the general services department;

FF. undercover license plate means a regular passenger license plate issued to a state vehicle which is registered in a fictitious name and address that cannot be traced to the state agency having custody of the vehicle.

[1.5.3.7 NMAC - Rp, 1.5.3.7 NMAC, 08-14-08]

1.5.3.8 STATE VEHICLE PROCUREMENT PROCESSES AND VEHICLE STANDARDS: In accordance with the governor's executive orders 05-049, "Requiring the Increased Use of Renewable Fuels in New Mexico State Government", and 06-069 "New Mexico Climate Change Action", this section establishes the standards by which all state and public agencies shall procure state vehicles with a declared weight up to 10,000 pounds.

A. State agency vehicle requests, application form required requests for exemption to executive orders. By the 15th of April of each calendar year, state agencies shall prepare a SCFA application for purchase, lease and disposal of state vehicles. The state agency in conjunction with GSD shall assure that all requests meet the governor's executive order directives including assuring the highest fuel economy for the intended use, meeting or exceeding the most current CAFE standards and compliance with the Alternative Fuels Acquisition Act. Any requests for exemption from the governor's executive orders shall be submitted along with clear justification for the requested exemption and the aforementioned form for the director's review. If the exemption is timely and approved, the agency shall be notified with time to submit the request to the specification developers. The specification development time-line shall not be expanded due to the state agency's failure to comply with this rule.

B. State procurement cycles - time lines. State agency vehicles shall be procured based on specifications consistent with executive order 05-049 and prepared by the department in conjunction with DOT, and EMNRD during the months of June, July and August of each year. The development of the specifications is to prepare for the bid advertisement, pre-bid conference, bid opening and award for the purchase of vehicles for each fiscal year. The order of model year vehicles shall be consistent with the directions established in each bid, with expectations that new year

vehicle models will be delivered prior to manufacturer's build-out dates for each subsequent calendar year.

C. Vehicle standards.

The standards establish the minimum requirements for the procurement of passenger vehicles for the executive, legislative and judicial branches of the state of New Mexico. DOT, EMNRD, G&F and DPS vehicle standards are developed and maintained by the respective agency. These standards are to be reviewed annually and subject to change based on increased fuel efficiencies and reduction of green house gasses. The standards are an administrative attachment to this rule and must be reviewed, amended, published and distributed by July 1 of each year.
[1.5.3.8 NMAC - N, 08-14-08]

1.5.3.9 LEASE OF MOTOR POOL VEHICLES:

A. A state agency or public agency may lease a motor pool vehicle from the SCFA:

(1) through a short-term lease for a day to a period not exceeding six (6) consecutive months; or,

(2) through a long-term lease for a period exceeding six (6) consecutive months; and,

(3) through a third-party commercial lease; entities outside of the executive, legislative and judicial realm are restricted to the lease of third-party commercial leased vehicles.

B. Rates. Rates for the lease of motor pool vehicles are based on costs for the type of vehicle leased. The SCFA will provide current rates and policies for the lease of motor pool vehicles upon request. There are three types of SCFA long-term leases:

(1) standard lease is a long-term lease of a TSD owned vehicle which includes overhead, maintenance and depreciation costs, less residual; divided by the life-cycle term;

(2) operational lease is a long-term lease of a TSD owned vehicle which includes overhead and maintenance costs; and,

(3) third-party commercial lease is a long-term lease of a TSD leased vehicle which includes overhead, maintenance and third-party financing costs.

C. Terms.

(1) Standard leases depend on the leasing agency's operational requirements and budget availability. Life-cycles for standard leases are to be five years and one-hundred thousand miles (100,000).

(2) Operational leases shall consist of leases for vehicles that have exceeded the standard lease life-cycles or have been procured by the user agency that has

chosen not to pay the depreciation cost.

(3) Third party commercial leases are determined by a state price agreement, typically three years and 60,000 miles. These leases are subject to mileage overruns and excessive wear and tear costs that are passed on to the customer.

D. Accounts receivable.

The SCFA requires the leasing state agency to maintain its accounts receivable current - thirty (30) days or less. The SCFA shall assess a one and one-half percent (.015%) per month late payment penalty fee on accounts over thirty (30) days past due. The SCFA may take action to cancel any lease agreement(s) and recover the vehicle(s) if the lessee is delinquent over one hundred and twenty days in making payment. For short-term leasing, SCFA will charge for one day use for reservations that are not canceled.

E. Encumbrance. The SCFA requires the leasing state agency to encumber the entire fiscal year cost of the lease at the time the lease is signed at the beginning of each fiscal year. The leasing agency may disencumber funds only after a written request to the director is approved. The director will act on requests to disencumber funds within ten working days of the date of the receipt of the leasing agency's request.

F. Operating transfer.

To expedite the payment of lease costs to the SCFA, the user agency may choose to pay the annual cost of vehicles leased through an operating transfer within the first 45-days of each fiscal year.

G. Termination. Either the division or a state agency may terminate the lease of a state vehicle as per the terms and conditions included in the standing lease agreement.

[1.5.3.9 NMAC - Rp, 1.5.3.8 NMAC, 08-14-08]

1.5.3.10 STATE MOTOR VEHICLE LICENSE PLATES: At the beginning of each fiscal year, the director shall determine which type of license plate shall be issued for each state vehicle. This relates to the state of New Mexico government plate, street plate or undercover plate.

A. A state agency may submit a written request for an undercover license plate for any SCFA state vehicle it uses for legitimate undercover law enforcement purposes. The state agency must annually justify the need for an undercover license and must provide statutory authority to that effect.

B. A state agency may submit a written request for a street license plate for any state vehicle it uses in situations in which a state government license plate would be inappropriate. At the begin-

ning of each fiscal year, the state agency must justify the need for a street license plate and must provide statutory authority regarding the type of work requiring something other than a state government license plate. Based on the justification, the director may authorize the street plate; however, the use of a magnetic decal depicting the great seal of the state of New Mexico and the name of the agency must be used in those cases when investigative work is not being done. The requesting state agency shall bear the cost of all magnetic decals.

C. The director shall issue a state of New Mexico government license plate with permanent decals for all other state agency vehicles.

(1) All vehicles must display the state seal and an identifying decal describing the user agency, i.e. state of New Mexico Motor Pool, or the appropriate acronym identifying the user agency.

(2) All state vehicles must display the 1-800-627-6639 vehicle abuse program bumper sticker.

(3) All state vehicles must display the #DWI bumper sticker.

(4) User agencies will be billed the cost of replacement of authorized official decals or stickers.

(5) User agencies may use their own non-permanent decals upon acquiring director's written authorization. Cost for these decals will be the responsibility of the user agency.

(6) Deviation from the SCFA official decals and stickers must receive written prior authorization from the director.

[1.5.3.10 NMAC - Rp, 1.5.3.9 NMAC, 08-14-08]

1.5.3.11 REQUIRED DOCUMENTS IN STATE VEHICLES: Each state agency shall ensure that current copies of the following documents are kept in the glove compartment of all state vehicles in its custody.

A. Accident reports. These are forms and instructions that are included in the packet provided by RMD on how auto accidents in state vehicles are to be dealt with by the authorized driver.

B. Emergency repair forms. The director requires written instructions and procedures for emergency repairs of mechanical breakdowns during and after normal business hours.

C. Fuel credit cards. Each vehicle will have detailed instructions and procedures for use of the fuel credit card with a list of authorized purchases.

D. How-to brochure. Each vehicle will have a brochure that provides the driver simple instructions regarding the use of the vehicle, telephone numbers, emergency processes, and waivers.

E. RMD financial responsibility document. This document is the state's official proof of insurance.

F. Vehicle maintenance manual. This is the manual that is provided by the manufacturer which includes the manufacturer's specifications. Additional maintenance requirements or specifications may be required by the director and provided to the leasing agency in writing.

G. Vendor list. This is a current list of SCFA authorized motor vehicle maintenance and repair vendors throughout the state of New Mexico. The list is to be used for preventive maintenance, emergency road service and repair.

H. Vehicle registration. This is the official proof of vehicle ownership/registration document issued by the state motor vehicle division. This document shall remain with the vehicle until ownership is transferred or the vehicle is sold by SCFA.

I. Alternative fuels documents. Each vehicle will have information stating whether the vehicle can utilize alternative fuels, the type of alternative fuels recommended by the manufacturer (E-85, biodiesel, etc.) and a list of locations that sell alternative fuels.

[1.5.3.11 NMAC - Rp, 1.5.3.10 NMAC, 08-14-08]

1.5.3.12 AUTHORIZED DRIVERS AND PASSENGERS:

A. Authorized drivers. The director may authorize a state employee who possesses a current valid New Mexico drivers' license and who has completed a defensive driving course and orientation prescribed by the division to operate a state motor vehicle. The state employee must have the appropriate class of driver's license to drive any state vehicle that is not a passenger vehicle.

B. Authorized passengers. Only authorized passengers may occupy a state vehicle. A person who is not a state employee must obtain written authorization from the director before occupying a state vehicle.

C. Suspension or revocation of authorized drivers' privileges. The director may suspend or revoke the authorized driver privileges of any state employee who permits a person who is not an authorized driver to operate a state vehicle or who transports, or permits the transportation of a person who is not an authorized passenger. In addition, such state employee may be held personally liable to the extent permitted by law for any liability for personal injury, death or property damage arising out of the unauthorized use or occupancy of the state vehicle. Reinstatement of driving privileges: an authorized driver that has his state driving

privileges suspended or revoked must complete a TSD NSC/DDC 6-hour class before receiving a written driver privilege reinstatement authorization from the director or his designee.

D. Exceptions. Nothing in this section shall be construed to prohibit the use or occupancy of a state vehicle:

(1) to render emergency aid or assistance to any person; or

(2) by private sector automobile mechanics or maintenance and repair personnel performing required maintenance or repairs.

[1.5.3.12 NMAC - Rp, 1.5.3.11 NMAC, 08-14-08]

1.5.3.13 DEFENSIVE DRIVING COURSE:

A. Defensive driving course. Based on research conducted on all driver certification processes, TSD has determined that it will use the on-site national safety council defensive driving and safety curriculum. Agencies desiring to provide NSC/DDC training independent of TSD must request authorization to provide NSC/DDC instruction from the director prior to commencing the utilization of any NSC/DDC tools or materials. In addition, the agencies must follow the curriculum approved by the director prior to commencing the utilization of the proposed training tools. It is the responsibility of the proposing agency to incorporate all state of New Mexico TSD requirements into the defensive driving curriculum.

B. Course availability. TSD shall offer regularly scheduled defensive driving classes in Santa Fe and Albuquerque. This does not preclude TSD from offering these classes at the requesting agency's site. A state agency or state employee should contact the division for information about scheduled classes, locations, costs, registration, or scheduling of department trainings.

C. Instructor certification. To receive a certificate as a NSC/DDC Instructor, it is necessary to submit the written request to the director for review and approval. This applies to employees who may have received a NSC/DDC Instructor certification while under the employment of another governmental agency. All prospective instructors are required to audit the TSD NSC/DDC - 6 and 4 hour classes; and, are required to teach one TSD 6 and one TSD 4 hour course under TSD supervision prior to receiving consideration of approval to teach. Instructors in good standing must complete the certification process every two years.

D. Driver certification required. Four or six-hour certificates are valid for four years. All authorized drivers of state vehicles must have a current TSD

approved defensive driving certificate in their possession while driving a state vehicle. TSD will require a person who seeks to operate a state vehicle to provide proof of current certification. New employees must successfully take and pass the six (6) hour TSD prescribed defensive driving class with a grade of 80% or better to become an authorized driver. If the new employee provides proof of NSC/DDC certification within two years previous to the date of employment, at the discretion of the director, the employee may only have to take the four (4) hour NSC/DDC certification course.

(1) If a state employee needs to operate a state vehicle in furtherance of state business but has not successfully completed the defensive driving course, the state employee must register for the next available defensive driving course. The employee's agency head or designee must submit a written request for a temporary waiver not to exceed thirty days of the certification requirement from the director. The waiver request shall include the state employee's name and New Mexico driver's license number, and the date the state employee is scheduled to attend the defensive driving course. If approved, the director will specify the term of the waiver. If the request is denied, the director will specify in writing the reason for the denial within ten working days of the date the waiver request is received by the division. Driver waivers cannot be renewed.

(2) If the state employee's certification (four-hour or six-hour) has expired, the employee shall be required to successfully complete a six-hour NSC/DDC certification class.

E. Driver re-certification. Each state employee is required to take the defensive driving refresher course every four (4) years.

(1) An employee may take the four (4) hour refresher course provided by TSD; however, the employee must provide written proof of previous DDC certification.

(2) Failure to provide the proof required in the previous sub-section will require the employee to register to take the six (6) hour DDC course.

F. List of certified state employees. The agency vehicle coordinator shall maintain a list of certified state employees employed by the agency, including a current copy of the employee's valid NM drivers' license.

G. User agency requirements.

(1) The user agency is responsible for checking authorized drivers' licenses to assure compliance with motor vehicle division laws. If TSD conducts the drivers' license check, on behalf of the user agency, the user agency will pay TSD the cost for each record check.

(2) The maintenance of a NSC/DDC certificate database, which will be provided by TSD.

(3) The maintenance and listing of authorized drivers.

(4) Maintenance and listing of suspended driving privileges including drivers' license revocations, suspensions and DUIs.

(5) The agency is subject to TSD audits of state agency authorized driver records.

H. Lost certificates. If a state employee loses his or her defensive driving certificate, the TSD will issue a replacement certificate at a cost per certificate. If the state employee cannot provide proof of taking a TSD authorized defensive driving certification course, the employee must register for a six hour defensive driving course.

[1.5.3.13 NMAC - Rp, 1.5.3.12 NMAC, 08-14-08]

1.5.3.14 TRAFFIC LAWS AND OPERATOR CONDUCT:

A. Authorized drivers shall obey all applicable traffic laws while operating a state vehicle.

B. Authorized drivers must exercise appropriate caution and prudence while operating a state vehicle.

C. Authorized drivers shall not engage in discourteous behavior or inappropriate conduct while operating a state vehicle.

D. Authorized drivers shall not use state vehicles for inappropriate or illegal activities.

E. Authorized drivers shall only utilize a cell phone with a hands-free device while operating a state vehicle, whether in-state, out-of-state or out-of-country.

F. Authorized drivers shall operate state vehicles at or below posted speed limits.

G. Authorized drivers shall minimize distractions while operating a state vehicle. The distractions include but are not limited to reading, texting, and playing with the radio/cd player.

H. An authorized driver who receives a traffic citation or parking ticket while using a state vehicle shall be personally responsible for any costs (cost of ticket, late fees, court fees or administrative fees) associated with the citation or ticket. If TSD receives a state employee's traffic citation or parking ticket involving a SCFA motor vehicle, the director will forward it to the state agency leasing the state motor vehicle to assure the employee promptly clears the citation/ticket.

I. Authorized drivers who are convicted of a traffic violation while

driving a state vehicle are required to immediately register for a six-hour NSC/DDC certification class.

J. Authorized drivers involved in a traffic accident while operating a state vehicle that are found at fault are required to immediately register for a six-hour NSC/DDC certification class.

K. State employees shall carpool to meetings, conferences whenever feasible.

[1.5.3.14 NMAC - Rp, 1.5.3.13 NMAC, 08-14-08]

1.5.3.15 SUSPENSION OF STATE VEHICLE OPERATOR PRIVILEGES:

A. The director shall automatically suspend a state employee's authorization to operate a state vehicle if the state employee's New Mexico driver's license expires, is revoked, or suspended.

B. The director or the state agency may suspend or revoke driving privileges of an authorized driver for failure to comply with any provision of this rule. A state agency shall report each suspension or revocation to the director. The director will provide the agency head with names of any state employee's employed by the requesting state agency whose state vehicle operator privileges have been suspended or revoked.

C. To determine that state authorized drivers have a valid driver's license, the director or designee will at random review the driving record of state authorized drivers. The director will review the status of the driving record of any state authorized driver upon receipt of any request for waiver, constituent complaint, traffic citation, or police report alleged driver or vehicle abuse.

D. An authorized driver that has his/her driving privileges suspended or revoked must successfully complete a TSD NSC/DDC 6-hour class before the director will consider authorizing the reinstatement of those privileges.

E. The director shall review all complaints of alleged fraud, waste, and abuse involving state vehicles, and shall forward them to the state agency fleet coordinator and to the appropriate state agency management team.

[1.5.3.15 NMAC - Rp, 1.5.3.18 NMAC, 08-14-08]

1.5.3.16 ALCOHOL, CONTROLLED SUBSTANCE, DRUG, AND TOBACCO USE PROHIBITED - REPORTING REQUIREMENTS:

A. No authorized driver shall operate a state vehicle while under the influence of intoxicating alcohol, controlled substances, or drugs.

B. No authorized driver shall transport an intoxicated passenger, nor shall they transport intoxicating alcohol of any type, whether in open or unopened containers, while operating or occupying a state vehicle, unless the person is an employee of the state alcohol and gaming division of the regulation and licensing department or a state law enforcement officer investigating criminal activities.

C. No authorized driver shall operate a state vehicle when he or she is so impaired by a legal drug that renders him or her incapable of operating a motor vehicle in a safe and responsible manner.

D. No authorized driver or passenger shall smoke or use smokeless tobacco products of any type in any state vehicle.

E. The driving privileges of an authorized driver that is convicted of a DUI citation while operating a state vehicle are immediately and permanently revoked. Reinstatement of the driving privileges may be requested in writing by the head of the state agency in which the employee works. The director will review the request and provide the state agency a written determination as to the employee's state vehicle driving privileges within ten working days of the receipt of the request by the division.

F. It is the sole responsibility of the state employee to report all current convictions of driving while intoxicated to their immediate supervisor and the director. Failure to comply with this section shall cause immediate revocation of their driving privileges of state vehicles. It is the director's responsibility to report DUI convictions to the state employee's immediate supervisor and cabinet secretary or agency head. Disciplinary actions are the responsibility of the state agency.

G. The state authorized driver privileges shall be suspended while the employee goes through the DUI court and administrative process. If convicted, the authorized driver's state vehicle driving privileges shall be revoked. If not convicted, the state agency shall notify the director in writing requesting that driving privileges be reinstated along with evidence of the dismissal of charges. The director will review the request and provide the state agency a written determination as to the employee's state vehicle driving privileges within ten working days of receipt of the request for reinstatement by the division.

H. Revocation of state vehicle driving privileges for a DUI conviction extends to the utilization of the employee's personal vehicle if it is to be used to conduct state business.

[1.5.3.16 NMAC - Rp, 1.5.3.14 NMAC, 08-14-08]

1.5.3.17 WEAPONS AND PETS PROHIBITED:

A. No authorized driver or passenger shall possess a weapon while operating a state motor vehicle unless the authorized driver or passenger is a certified law enforcement officer.

B. No pets allowed at any time in state vehicles. Upon written request, the director may authorize canine patrols or transportation of other animals including assistance dogs. The director will review the request and provide the state agency a written determination within ten working days of receipt by the division. [1.5.3.17 NMAC - N, 08-14-08]

1.5.3.18 SEAT BELT USE:

A. All authorized drivers and passengers of state vehicles shall wear seat belts.

B. All authorized drivers shall observe child safety and restraint laws at all times when transporting a minor in a state vehicle in furtherance of official state business.

C. Violation of this law may result in loss of state authorized driver privileges. [1.5.3.18 NMAC - Rp, 1.5.3.15 NMAC, 08-14-08]

1.5.3.19 USE OF FUEL CREDIT CARDS:

A. All state agencies and authorized drivers are required to use the GSD/TSD contracted fuel credit card for authorized purchases.

B. The state agency shall assign a single fuel credit card to each vehicle and a personal identification number (PIN) to each authorized driver.

C. Whenever possible, authorized drivers shall use self-service fuel pumps when refueling motor pool vehicles. Authorized drivers are required to use alternative fuels when they are approved by the manufacturer and when an alternative fuel vendor is located less than ten miles away at the time fueling is needed. All non-flex fuel gasoline operated vehicles will use E-10 when a vendor is located less than ten miles away at the time fueling is needed. Each agency will evaluate fuel usage reports provided by the fuel credit card company at last twice a year to assess alternative fuel usage by agency staff.

D. The fuel credit card may be used for road-side service, and/or emergency service or repairs not to exceed \$250 per occurrence.

E. If an authorized driver uses the fuel credit card to purchase an unauthorized item or service, the state agency shall collect the cost of the unauthorized purchase from the authorized driver. The state agency or the director may sus-

pend or revoke the state vehicle operator privileges of an authorized driver for misuse of a fuel credit card. A state agency may also take other appropriate disciplinary action.

F. A state agency or authorized driver shall immediately notify the vendor contracted by GSD/TSD if the fuel credit card for a motor pool vehicle is lost.

G. All expenses charged to the contracted GSD/TSD fuel credit card shall be paid by the user agency.

[1.5.3.19 NMAC - N, 1.5.3.16 NMAC, 08-14-08]

1.5.3.20 AUTHORIZATION TO COMMUTE:

A. No authorized driver or passenger shall use a state vehicle for private use.

B. Commuting is defined as the consistent use of a state vehicle from assigned post of duty to domicile and from domicile to assigned post of duty, even if it is for short periods of time, i.e. legislative session. Occasional use is not considered commuting, i.e. taking the vehicle home the night before an out-of-town trip.

C. A state agency must develop a written policy that allows authorized drivers to use state vehicles to commute between work and residence for security purposes or if doing so assists the state agency in accomplishing its mission. Only the cabinet secretary of an executive department or the director of an independent executive state agency (not part of an executive department but still part of the executive) can approve the commuting policy and commuting of individual authorized drivers.

D. Each state agency permitting authorized drivers to utilize this domicile-to-duty privilege shall maintain current records of:

(1) all state authorized drivers and passengers by name and position;

(2) the number of miles each state authorized driver who commutes drives annually between work and residence using a state vehicle;

(3) the number of times annually a state authorized driver who is given written approval to use a state vehicle to commute between his assigned post of duty and his primary residence and is called back when the state employee is off-duty;

(4) review all authorizations to use a state vehicle to commute at least once a year; and

(5) report commuting information and subsequent changes the state agency commuting policies to TSD by the fifteenth of July of each year.

[1.5.3.20 NMAC - Rp, 1.5.3.17 NMAC, 08-14-08]

1.5.3.21 STATE VEHICLE CARE AND MAINTENANCE:

A. An authorized driver must turn off the ignition, close all windows, and lock the doors and trunk of a state vehicle whenever the state vehicle is left unattended.

B. State agencies and authorized drivers are responsible for assuring that state vehicles in their custody are parked in secure areas minimizing exposure to vandalism, damage, destruction, wreckage, sabotage, defacement and/or harm. If after multiple occurrences of vandalism, damage, destruction, wreckage, sabotage, defacement and/or harm occur, the agency head shall, in writing, request authorization from the director for authorized drivers to take state motor vehicles to their place of residence for security purposes only. The authorization will be provided only if the state agency head or designee can prove that:

(1) the state agency's landlord does not provide a secure space for state vehicles; or,

(2) the state agency cannot avail itself of other secure state of New Mexico parking spaces; or,

(3) the state agency cannot acquire secure private sector parking spaces.

C. If the director provides the approval, the state agency must comply with the reporting and tracking requirements of 1.5.3.20 NMAC, AUTHORIZATION TO COMMUTE.

D. State agencies must ensure that the subscribed manufacturer's preventive maintenance service is done on all leased state vehicles at regular mileage, or time intervals, in accordance with the manufacturer's specifications, or as otherwise specified by the director. For vehicles leased or owned by TSD, without exception, the agency is required to use TSD approved vendors. If there are vendors that are not on the list that are willing to provide repair or maintenance services the user agency must refer them to the TSD procurement office for inclusion to the TSD authorized vendor list. Under no circumstances will it be permitted for the authorized driver to receive services from an unauthorized vendor without a valid purchase order from TSD. Unauthorized expenses will be billed to the user agency.

(1) The state agency is responsible for ensuring that oil and oil filters on all leased state vehicles are changed in accordance with the manufacturer's specifications, TSD maintenance requirements, and that all other preventive maintenance functions performed are in accordance with the prescribed TSD service schedule, which is an attachment to the vehicle lease.

(2) A state agency, may without

the prior approval of the director, use the fuel credit card to perform minor repairs of emergency equipment, such as changing windshield wipers, repairing a damaged tire, replacing a fan belt, or adding a quart of oil, etc., in an amount not to exceed \$250. If the emergency repairs will cost more than \$250, it is the responsibility of the user agency to notify the TSD procurement officer of the need to execute an "emergency procurement" in accordance with the New Mexico Procurement Code, Chapter 13, Article 1 of the NMSA 1978.

E. State agencies are responsible for the cleanliness of leased state vehicles inside and out. State agencies are also responsible for checking the leased state vehicle's vital engine fluids and tire pressure at each refueling.

F. No authorized driver or passenger shall abuse or misuse a leased state vehicle. The SCFA or a state agency head or designee may assess authorized drivers and authorized passengers for the costs of loss of or damage to a leased state vehicle if the loss or damage was caused by reckless driving or driving while under the influence of intoxicating liquor, controlled substances or drugs.

G. The SCFA will charge a state agency for the cost of repairing a leased state vehicle damaged due to neglect or abuse. The SCFA will charge the cost of repairs to a state agency if the state agency neglects a leased state vehicle or fails to inform the SCFA of possible damage or a maintenance problem. The director may recall a leased state vehicle or suspend or revoke the authorized driver privileges for damage or improper care of a leased state vehicle.

H. State agencies may not display any commercial advertising on a state vehicle at any time. A state agency may display the agency's toll-free telephone number on a state vehicle. A state agency must display the "1-800-627-6639" toll free telephone number bumper sticker on the rear bumper of all state vehicles with a state of New Mexico government license plate. The director must approve, in writing, any agency written requests for other bumper sticker, plaque or signage prior to the state agency affixing it to a state vehicle. For flex fuel vehicles, a state agency must display a sticker next to the gas port indicating the type of alternative fuel the vehicle can accept.

I. No person shall alter, modify, convert, or improve the original vehicle equipment of any state vehicle without the prior written authorization of the director.

[1.5.3.21 NMAC - Rp, 1.5.3.19 NMAC, 08-14-08]

1.5.3.22 STATE VEHICLE RETURN:

A. The director may rotate state vehicles within an agency or between agencies if the director determines that a state agency is under or over utilizing an assigned vehicle. The director or designee will notify the state agency of such occurrences and recommend the rotation. The director, in conjunction with the state agency, will make the appropriate changes to the location of the leased state vehicle.

B. Once TSD has notified a state agency that a replacement vehicle is available to exchange for a vehicle that has met or exceeded its life expectancy, or is no longer road worthy, the agency has thirty (30) days to execute the exchange.

C. The SCFA will notify state agencies if there is a manufacturer's recall applicable to a leased state vehicle. The state agency shall take the leased state vehicle to the appropriate dealer for service or modification, and shall, upon completion of the recall-related work, notify the SCFA.

D. The director in conjunction with the SCFA and the state agency shall determine when a state vehicle needs to be replaced. Life cycles are determined primarily from user requirements provided by the agency fleet coordinator. A state agency must return a leased state vehicle to the division upon receipt of a new or different vehicle.

E. A state agency may return a leased state vehicle in accordance with the terms of the lease agreement.

F. A state agency shall not transfer; receive control of, or custody of, a leased state vehicle to or from another state agency without the prior written authorization of the director or designee.

[1.5.3.22 NMAC - Rp, 1.5.3.20 NMAC, 08-14-08]

1.5.3.23 EMERGENCY REPAIRS AND MECHANICAL BREAKDOWN:

An authorized driver shall immediately take steps to correct any mechanical or operating problem that occurs while a TSD leased state vehicle is in operation. An authorized driver shall, in no case, continue to operate a state vehicle if continued operation could endanger any person or property. Furthermore, the authorized driver is responsible for immediately notifying the state agency fleet coordinator and SCFA account manager of any unsafe vehicle condition. Failure to comply with the notification portion of this section requires any costs to be billed to the user agency or reimbursed to TSD.

[1.5.3.23 NMAC - Rp, 1.5.3.21 NMAC, 08-14-08]

1.5.3.24 VEHICLE UTILIZA-

TION: The utilization standards establish the minimum requirements for the use of passenger vehicles for the executive, legislative and judicial branches of the state of New Mexico. TSD, DOT, EMNRD, G&F and DPS develop and maintain vehicle utilization standards. These utilization standards are to be reviewed annually and subject to change based on increased fuel efficiencies (CAFE) and reduction of green house gas emissions benchmarks.

[1.5.3.24 NMAC - N, 08-14-08]

1.5.3.25 UNDER-UTILIZATION OF STATE VEHICLES:

The director or designee may re-allocate state vehicles that are being under-utilized.

A. The director shall analyze monthly leased state vehicle mileage statistics.

B. The director may rotate state vehicles within an agency or between agencies if it is determined that a state agency is under or over utilizing an assigned vehicle. The director or designee will notify the state agency of such occurrences and recommend the rotation. The director in conjunction with the state agency will make the appropriate changes to the location of the leased state vehicle.

C. If the director finds that a leased state motor vehicle is accumulating low mileage, the director will notify the state agency in writing that a state vehicle assigned to it is being under utilized.

D. The state agency shall examine its utilization of the state vehicle and respond in writing justifying to the director its need for the state vehicle and describing its intra-agency vehicle rotation plan. If the state agency does not provide such a plan, the director will rotate vehicles among state agencies.

E. The director or designee will continuously monitor mileage utilization of the leased state vehicles. If the agency's use of the leased state motor vehicle does not increase, the director may recall the vehicle or replace it with a state vehicle that has more mileage.

F. The director or designee will consider under utilization of state vehicles when evaluating a state agency's requests for additional or different vehicles.

[1.5.3.25 NMAC - Rp, 1.5.3.22 NMAC, 08-14-08]

1.5.3.26 VEHICLE DISPOSAL PROGRAM:

The disposal of vehicles is governed by Chapter 13, Articles 1 and 6 NMSA 1978. The director in conjunction with the SCFA will consider disposing of a state vehicle when:

A. the leased state vehicle reaches the end of its predetermined

accounting and life cycle;

B. the estimated cost of repairs exceed the value of the leased state vehicle; or,

C. the leased state vehicle is unsafe, inoperable or obsolete.

[1.5.3.26 NMAC - Rp, 1.5.3.23 NMAC, 08-14-08]

1.5.3.27 OUT OF STATE AND OUT OF COUNTRY TRAVEL IN STATE VEHICLES:

A. The director or designee must approve in writing all out-of-state and out-of-country travel requests, in state vehicles, in advance.

B. The state agency must request the appropriate approval in writing and at a minimum include the following information:

(1) names of employee travelers/drivers - if travelers/drivers are not employees please provide their names, entity they represent and reason why they need to travel in a state vehicle (relatives or friends that are not conducting business in the furtherance of state of New Mexico business cannot travel in a state car);

(2) NM drivers' license numbers of all authorized drivers;

(3) copies of drivers national safety council/defensive driving certificate;

(4) G or SG-Plates of vehicles making the trip;

(5) point of departure;

(6) points of destination, i.e. Santa Fe, New Mexico; to El Paso, Texas; to Ciudad Juárez, Chihuahua; to Chihuahua, Chihuahua; to Torreón, Coahuila, etc.

(7) date of departure;

(8) date of return; and,

(9) purpose for the travel.

C. The state agency fleet coordinator must provide the appropriate information to the director based on the following schedules:

(1) for a non-state employee passenger waiver, at least five working days notice;

(2) for an out-of-state waiver, at least five working days notice; and,

(3) for an out-of-country waiver at least ten working days notice.

D. The authorized driver must have the proper insurance, vehicle registration and waiver documentation in-hand prior to the travel date.

[1.5.3.27 NMAC - Rp, 1.5.3.24 NMAC, 08-14-08]

1.5.3.28 ACCIDENTS AND ACCIDENT REPORTING:

A. An authorized driver of a state vehicle owned or leased by GSD/TSD shall file a police accident report for any auto accident in a state vehicle as soon as possible regardless of the severity

of the accident. The police report and automobile loss notice are required with or without property damage, bodily injury, whether the authorized driver is at fault or not.

B. The authorized driver shall provide the original police accident report and automobile loss notice to RMD and a copy of the same to the agency vehicle coordinator and the director.

C. If the authorized driver did not file a police report, the state agency fleet coordinator must complete the automobile loss notice and include the authorized driver's, and/or any witnesses, written and notarized affidavit(s) describing the accident in detail, with distribution of the documents as previously described.

D. RMD will assist the director in maintaining accident reports and filing insurance claims for all state vehicles.

E. Since the premiums for RMD state passenger vehicles are part of the TSD lease rates, the deductible for any loss will be paid by TSD. However, if there is proof that the loss was caused by the negligence or abuse of a state employee, the user agency will bear the costs of the insurance deductibles up to \$1,000 and any other costs as may be determined by the director and RMD.

[1.5.3.28 NMAC - N, 1.5.3.25 NMAC, 08-14-08]

1.5.3.29 CUSTODY OF STATE VEHICLES:

A. Determination by director. The director may, on his own initiative or in response to a written request from a state agency, determine that custody of certain state vehicles should reside in a state agency. The director shall make such determination in accordance with the criteria set forth in Subsection B of Section 15-8-6. All state vehicles in the custody of other state agencies shall be titled in the name of the division in accordance with Section 15-8-9 NMSA 1978.

B. Responsibilities of state agencies with custody of state vehicles. A state agency that has custody of one or more state vehicles shall:

(1) appoint an agency fleet coordinator who shall be responsible for answering any questions from the director regarding the owned or leased TSD state vehicles in the state agency's custody;

(2) maintain an accurate inventory of all state vehicles in its custody, including any public property with a license plate;

(3) submit an inventory report to the director by June 15th of each year for the fiscal year ending on June 30 of that year;

(4) notify the director within thirty (30) days of any change in the name, address, telephone number, or facsimile number of the state agency or the agency

fleet coordinator, or any change in the status of state vehicles in the state agency's custody;

(5) register all state vehicles using the name GSD/TSD/SCFA as the first lien holder or name

(a) the name of GSD/SCFA as the first lien holder or name 1; and,

(b) the name of the state agency as name 2 and the state agency accounting code as "VIN 2";

(6) be responsible for all operation, maintenance, repair, and replacement costs of leased state vehicles in the state agency's custody;

(7) budget appropriately for replacement of leased state vehicles;

(8) develop written inventory, administrative, operational, and replacement policies;

(9) develop a written policy regarding the use of leased state vehicles for commuting between work and residence;

(10) track all special use motor vehicles and motor vehicles leased or purchased totally or partially with federal funds using the vehicle identification number (VIN) instead of the license plate number; and

(11) maintain insurance coverage on non - TSD leased state vehicles in accordance with the requirements established by RMD.

C. License plates. On an annual basis, the director shall determine which type of license plate shall be issued for each state vehicle in the custody of a state agency based on information provided by the requesting agency.

[1.5.3.29 NMAC - N, 1.5.3.26 NMAC, 08-14-08]

1.5.3.30 WAIVER FROM TSD

RULES: The GSD secretary or authorized designee may waive any portion of this rule provided the request is submitted in writing. [1.5.3.30 NMAC - Rp, 1.5.3.27 NMAC, 08-14-08]

HISTORY OF 1.5.3 NMAC:

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

GSD 85-202, State Motor Vehicle Regulations, filed 10-28-85;

GSD 90-202, State Motor Vehicle Regulations, filed 11-05-90.

History of Repealed Material:

GSD 90-202, State Motor Vehicle Regulations, filed 11-05-90, **repealed** effective 11-01-02.

1.5.3 NMAC, Administration and Use of State Vehicles (filed 10/01/2002) repealed 08-14-08.

Other History:

GSD 90-202, State Motor Vehicle Regulations, filed 11-05-90 **replaced** by 1.5.3 NMAC named Administration and Use of State Vehicles, effective 11-01-02. 1.5.3 NMAC, Administration and Use of State Vehicles (filed 10/01/2002) was replaced by 1.5.3 NMAC, Administration and Use of State Vehicles, effective 08-14-08.

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
CHILD SUPPORT ENFORCEMENT
DIVISION**

This is an amendment to 8.50.125 NMAC, Sections 6, 8 through 12, 15, 16 and 18, effective August 15, 2008.

8.50.125.6 OBJECTIVE: ~~To repeal all existing regulations for the child support enforcement division filed at state records as 8 NMAC 5 CSE 000.000 through 979.000 and to replace the existing regulations with new regulations and conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The regulations here codify present practices~~ To provide regulations for fees, payments, services, and distribution of support obligations in accordance with federal and state law and regulations.

[8.50.125.6 NMAC - Rp 8 NMAC 5.CSE.000.6, 5/31/01; A, 8/15/08]

8.50.125.8 CHILD SUPPORT PAYMENTS:

A. The IV-D agency has in effect procedures for the payment of support through the IV-D agency upon the request of either the non-custodial ~~parent~~ party or the custodial ~~parent~~ party, regardless of whether arrearages exist or withholding procedures have been instituted. The IV-D agency is designated to administer the state's withholding system. The IV-D agency monitors all amounts paid and the dates of payments and records them on an individual payment record. ~~[In the case of non-IV-D income withholdings, the IV-D agency charges an annual fee of \$25 for the cost of providing the services described in this section.]~~ As a condition of receiving IV-D/title IV-A services, recipients must submit to the IV-D agency child support directly received from the non-custodial ~~parent~~ party. If the recipient of ~~[IV-A] title XIX (medicaid)~~ services elects to receive medical support services only, the recipient of ~~[IV-A] title XIX (medicaid)~~ services may keep child support payments received directly from the payor.

B. All support payments distributed by the IV-D agency shall be

through electronic funds transfer (EFT). The custodial party must elect to receive the payments via direct deposit or a pre-paid debit card offered by the IV-D agency. If a custodial party receiving support payments fails to choose either option at the time of application or when requested by the IV-D agency, he/she will automatically be enrolled in the IV-D pre-paid debit card program. Exceptions to disbursements via EFT may be granted for exceptional circumstances. Those wishing to request an exemption should request an "EFT exemption form" from the IV-D agency. The form must be fully completed to include an explanation of the exceptional circumstances requiring an exemption from EFT. The IV-D agency will respond in writing either granting or denying the request for an exemption.

[8.50.125.8 NMAC - Rp 8 NMAC 5.CSE.255, 5/31/01; A, 8/15/08]

8.50.125.9 STATE DISBURSEMENT UNIT:

The state IV-D agency has established and operates a state disbursement unit for the collection and disbursement of payments in all cases being enforced by the state IV-D agency, and in all cases not being enforced by the state IV-D agency under this part in which the support order was initially issued in the state on or after January 1, 1994, and in which the income of the non-custodial ~~parent~~ party is subject to immediate income withholding, regardless of whether support payments by such ~~parent~~ party are in arrears, on the effective date of the order. (42 USC 654 ~~b(4)~~ a).

[8.50.125.9 NMAC - N, 5/31/01; A, 8/15/08]

8.50.125.10 COLLECTION OF FEES/RECOUPMENTS:

New Mexico is a cost recovery state, and other states' IV-D agencies have been notified of this fact. All fees charged to the custodial party are deducted from payments the IV-D agency distributes to the ~~[IV-D payee]~~ custodial party. The amount the IV-D agency deducts from each payment will not exceed ten percent of the total amount of the distribution. Once the percentage for the fee is deducted, the balance of the distribution is sent to the ~~payee~~ custodial party. Title IV-A, Title IV-E and medicaid-only (Title XIX) recipients are not charged any fees; federal regulations will not allow cost recovery on these cases.

A. Fee types and amounts:

- (1) non-IV-D wage withholding payment processing: \$25 (annually)
- (2) non-IV-a full service IRS collection: applicable federal fee
- (3) paternity genetic testing: as charged by lab

(4) non-IV-A/IV-E case processing: actual cost

(5) parent locate only: \$60.

(6) filing fee: actual cost

(7) witness fee: actual cost

(8) service of process: actual cost

(9) expert witness fee: actual cost

(10) court costs: as assessed

(11) establishment of support obligation ~~and/or~~ and paternity (if necessary): \$250

(12) modification: ~~as charged by IV-D agency~~ \$150

(13) enforcement: \$250

(14) tax intercept related: as determined by federal regulations

(15) IRS tax intercept service: \$25

(16) TRD tax intercept service: ~~[\$25] \$20~~

B. Refund of fees: Fees are to be refunded only under the following conditions:

(1) fees have been charged in error or overcharged;

(2) the court orders a refund.

C. Fees are assessed to the custodial or non-custodial party requesting an action or service (i.e. establishment of paternity, modification or enforcement of support obligation) in a IV-D case in accordance with the fee schedule above.

D. Genetic testing fees: The IV-D agency shall advance the cost of genetic testing. If the non-custodial party is not excluded from the probability of paternity, he/she shall reimburse the IV-D agency for any advanced testing cost.

E. Recoupment: The IV-D agency will recoup from the custodial party for any over-distribution of funds and for any funds collected from the non-custodial party that are returned for insufficient funds. If the recoupment is pursuant to an over-distribution of funds, the recoupment amount shall not exceed twenty-five percent of any future distribution to the custodial party until paid in full. If the recoupment is pursuant to insufficient funds received from the non-custodial party's payment, the recoupment amount shall be one hundred percent of any future distribution to the custodial party until paid in full.

[8.50.125.10 NMAC - Rp 8 NMAC 5.CSE.801, 5/31/01; A, 8/15/08]

8.50.125.11 DISTRIBUTION OF COLLECTIONS (EXCEPT FOR FEDERAL INCOME TAX REFUND OFFSETS):

A. In accordance with federal regulations, for purposes of distribution in a IV-D case, amounts collected, except for amounts collected through federal income tax refund offset, must be distributed as follows:

(1) current support (monthly payment ordered for current support)

(2) past due support (monthly payment on ~~judgement~~ judgment)

(3) current support arrears

(4) past due support arrears.

B. The requirement to apply collections first to satisfy the current support obligation is critical in all IV-D cases to ensure that payment records are consistent in interstate cases, regardless of whether the amount applied to current support is paid to the family (as in a former assistance case) or retained by the state to recover unreimbursed assistance in a current assistance case.

C. Current assistance cases: The state will (not exceeding the cumulative amount of unreimbursed assistance paid to the family):

(1) pay to the federal government the federal share of the entire amount collected;

(2) retain the state share of the amount collected; and

(3) reduce the cumulative amount of unreimbursed assistance by the total amount collected and disbursed under (1) and (2), and distribute collections exceeding the cumulative amount of unreimbursed assistance to the family.

D. Federal statute does not specify the order in which collections are applied to satisfy assigned arrearsages in current assistance cases. The state of New Mexico has selected the following option:

(1) collections will be first applied to temporarily assigned arrearsages; and

(2) additional collections will be applied to permanently assigned arrearsages.

E. At the discretion of the New Mexico legislature, the IV-D agency may, on a monthly basis, disburse to the IV-A service recipient a specified amount from collections on current support.

F. Former assistance cases: For collections made prior to October 1, 1998 (other than through federal income tax refund offset), the state shall:

(1) first, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) second, distribute any amount above the current monthly support obligation to arrearsages owed to the family or assigned to the state; the federal statute does not specify the order in which collections are applied to satisfy arrearsages; the state must have procedures which specify the order in which assigned arrearsages will be satisfied; if the state distributes any amount to assigned arrearsages, the state must pay to the federal government the federal share of the amount so collected; the state must retain the state share of the amount so col-

lected, with one exception; the state may retain or pay to the family the state share of collections applied to arrearsages which accrued while the family was receiving assistance after October 1, 1996.

G. For collections made on or after October 1, 1998, or earlier at state option (other than collections through federal income tax refund offset), the state shall:

(1) distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) distribute any amount above the current monthly support obligation to satisfy never-assigned arrearsages and pay that amount to the family;

(3) distribute any amount above amounts distributed in (1) and (2) to satisfy unassigned pre-assistance arrearsages and conditionally-assigned arrearsages and pay that amount to the family.

(4) distribute any amount above amounts distributed in (1), (2) and (3) to satisfy permanently-assigned arrearsages; the state must pay the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected with one exception; the state may retain or pay to the family the state share of collections applied to arrearsages that accrued while the family was receiving assistance after October 1, 1996;

(5) reduce the cumulative amount of unreimbursed assistance by the total amount distributed under (4), distribute collections exceeding the cumulative amount of unreimbursed assistance to satisfy unassigned during-assistance arrearsages and pay those amounts to the family.

H. Never-assistance cases: All support collections in never-assistance cases must be paid to the family.

I. No ~~monies collected~~ collections of funds will be sent to third parties, attorneys, or agents, except in cases where there is a ~~protective payee~~ court order directing the support payment(s) to a person or entity other than the custodial party.

[8.50.125.11 NMAC - Rp 8 NMAC 5.CSE.802, 5/31/01; A, 8/15/08]

8.50.125.12 DISTRIBUTION OF COLLECTIONS THROUGH FEDERAL INCOME TAX REFUND OFFSET:

Any amount of support collected through federal income tax refund offset will be retained by the state to the extent past-due support has been assigned to the state up to the amount necessary to reimburse the state for cumulative amounts paid to the family as assistance by the state. The state will pay to the federal government the federal share of the amounts so retained. To the extent the amount collected exceeds the amount

required to be retained, the state will pay the excess to the family.

A. Current assistance cases: Support collections through federal income tax refund offsets in current assistance cases are retained by the state up to the cumulative amount of unreimbursed assistance paid to the family. Collections over and above the cumulative amount of unreimbursed assistance are paid to the family.

B. Former assistance cases: Support collections made through federal income tax refund offsets in former assistance cases shall first be applied to assigned arrearsages. This includes ~~temporarily assigned and~~ any conditionally-assigned arrearsages. These collections shall be retained by the state up to the cumulative amount of unreimbursed assistance paid to the family. Collections over and above the cumulative amount of unreimbursed assistance are paid to the family.

C. Never-assistance cases: Support collections through federal income tax refund offsets in non-assistance cases are paid to the family.

[8.50.125.12 NMAC - N, 5/31/01; A, 8/15/08]

8.50.125.15 CHILD LEVEL ACCOUNTING:

~~[As a condition of eligibility for assistance under title IV A of the act, a member of a family must assign to the state any rights a family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving assistance) to support from any other person, which accrue (or have accrued) before the date the family leaves the program.] An application for public assistance by any person constitutes an assignment by operation of law of any support rights the person is entitled to from any other person, whether the support rights are owed to the applicant or to any family member for whom the applicant is applying for receiving assistance. The assignment includes all support rights that have accrued at the time of application for public assistance and continues as an assignment of all support rights the applicant is entitled to for as long as the applicant receives public assistance.~~ Therefore, in current or former assistance cases, states may not use child-level accounting by splitting or pro-rating the family grant amount on a per-child basis when the child is (or was) included in the family unit and must continue to apply collections to the cumulative amount of unreimbursed assistance balances based on the total monthly family grant amount.

[8.50.125.15 NMAC - N, 5/31/01; A, 8/15/08]

8.50.125.16 CHILD SUPPORT

RECEIVED DIRECTLY FROM PAYORS: As a condition of receiving IV-D services, all recipients must submit to the IV-D agency all court ordered, voluntary agreement and voluntary contribution child support directly received from the non-custodial ~~parent~~ party. Failure to cooperate with this requirement may constitute cause for closing the IV-D case for non-cooperation. If the recipient of IV-D services elects to receive medical support services only, the recipient of IV-D services may keep child support payments received directly from the payor.

[8.50.125.16 NMAC - Rp 8 NMAC 5.CSE.802.4, 5/31/01; A, 8/15/08]

8.50.125.18 CHILD SUPPORT CASE SERVICES: The IV-D agency provides two types of case services: full service and payment processing.

A. Full services cases: Recipients of IV-A services are automatically enrolled for full services and recipients of title XIX may elect to receive full services for all support or solely for medical support. Applicants not receiving any type of public assistance may also request full services which include:

- (1) establishment of paternity;
- (2) establishment of a child support, medical support order, or both;
- (3) enforcement of a child support orders, spousal support orders (so long as there is a current order for child support), and medical support orders;
- (4) administrative enforcement of orders, including referrals for tax intercepts, passport denial, license revocation, and financial institution data match;
- (5) issuance of wage withholding against a non-custodial party's earnings/wages for support obligations; and
- (6) modification of child support orders, if appropriate.

B. Payment processing cases: A custodial party currently receiving full services from the IV-D agency or is opening a new case with the IV-D agency may elect to receive payment process services so long as he/she is not currently receiving public assistance (title IV-A or title XIX) and does not have an outstanding balance of arrears owed to the state for prior public assistance. Payment processing services are charged an annual fee as stated in section 10 above. In order to receive payment processing services, the custodial party must produce a valid court order (either issued by or registered by a court in New Mexico) for a support obligation and a copy of a wage withholding order indicating that payments are to be sent to the IV-D agency.

(1) The IV-D agency is not responsible for:

(a) establishing, modifying, or enforcing the support obligation;

(b) establishing, modifying, enforcing, or terminating the wage withholding order;

(c) calculating or determining the appropriate amount of support, payment toward arrears, delinquencies, and arrearages;

(d) appearing in court for any issues involving the establishment, modification, enforcement or termination of the support obligations.

(2) The IV-D agency will provide either the custodial party or the non-custodial party a printout of the payments received by the IV-D agency after receiving a written request.

(3) The IV-D agency may terminate the payment processing services if the employer withheld payments cease.

(4) The IV-D agency can only accept employer withheld payments for payment processing cases. Direct payments from the non-custodial party or from any other source will not be accepted.

[8.50.125.18 NMAC - N, 8/15/08]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.120 NMAC, Section 9, effective 08/15/2008.

8.139.120.9 SEMIANNUAL REPORTING: Semiannual reporting is a reporting requirement for households that receive food stamp benefits, unless an exclusion applies.

A. Excluded from semiannual 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, that receive social security or SSI and has no earned income;
- (4) a household in which all members are ABAWDs with no earned or unearned income and reside in a non-exempt administrative area;

~~(5) a household in which all adult members have no history of earned income in the six months prior to application or recertification;~~

~~(6)~~ (5) a household determined by the county director 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 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. C. 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. D. 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. E. 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 household 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 status;

(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.] E. 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.] G. 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 the income received from any consecutive past 30 day period that includes 30 days 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 the income received from any consecutive past 30 day period that includes 30 days 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 the income received from any consecutive past 30 day period that includes 30 days 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 the income received from any consecutive past 30 day period that includes 30 days 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 income received from any consecutive past 30 day period that includes 30 days 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 semi-annual 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.

[H-] H. 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-] 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-] 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-] 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-] M. Reporting requirement for semiannual reporting households: 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-] 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; or

(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 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.

(4) The loss of unearned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that the loss of income was reported to the agency, and verified by the household.

[O-] 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-] 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 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; A, 07/16/2008; A, 08/15/2008]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.302.4 NMAC, sections 1, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, effective August 14, 2008. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.704 to comply with NMAC requirements. The Part name is also amended.

PART 4 OUT OF STATE AND BORDER AREA PROVIDERS

8.302.4.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[2/1/95; 8.302.4.1 NMAC - Rn, 8 NMAC 4.MAD.000.1 & A, 8/14/08]

8.302.4.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services

under Title XIX of the Social Security Act] as amended and by the state human services department pursuant to state statute. See Sections 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991-)] as amended, or other state statute. See NMSA 1978, Sections 27-2-12 et seq. (2006). [2/1/95; 8.302.4.3 NMAC - Rn, 8 NMAC 4.MAD.000.3 & A, 8/14/08]

8.302.4.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section. [2/1/95; 8.302.4.5 NMAC - Rn, 8 NMAC 4.MAD.000.5 & A, 8/14/08]

8.302.4.6 OBJECTIVE: The objective of these [regulations is to provide policies] rules is to provide instruction for the service portion of the New Mexico [medicaid program. These policies describe eligible providers, covered services, non-covered services, utilization review, and provider reimbursement.] medical assistance programs. [2/1/95; 8.302.4.6 NMAC - Rn, 8 NMAC 4.MAD.000.6 & A, 8/14/08]

8.302.4.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of [medicaid eligible individuals] eligible recipients by furnishing payment for quality health services at levels comparable to private health plans. [2/1/95; 8.302.4.8 NMAC - Rn, 8 NMAC 4.MAD.002 & A, 8/14/08]

8.302.4.9 [OUT OF STATE PROVIDERS: The New Mexico medicaid program (medicaid) pays for services furnished by border providers and out of state providers in instances when the needed services are not available in the state of New Mexico or when recipients are traveling out of state and need medical attention. This part describes eligible providers, covered services, service limitations, and general reimbursement methodology.]

OUT-OF-STATE AND BORDER AREA PROVIDERS: Border area services are those that are rendered within 100 miles of the New Mexico state border (Mexico excluded). Out-of-state services are those that are rendered in an area more than 100 miles from the New Mexico border (Mexico excluded). To help New Mexico eligible recipients receive medically necessary services, MAD pays for border area services to the same extent and subject to the same rules and requirements that such services are covered when provided within the state. MAD pays for out-of-state services as described under 8.302.4.12 NMAC, covered out-of-state services. [2/1/95; 8.302.4.9 NMAC - Rn, 8 NMAC 4.MAD.704 & A, 8/14/08]

8.302.4.10 ELIGIBLE PROVIDERS: Out-of-state providers and border providers must be licensed or certified by their respective states to be considered eligible to provide services to New Mexico recipients, or if providing a New Mexico home and community-based services waiver service to a New Mexico medicaid waiver recipient, a provider that meets the New Mexico home and community-based services waiver standards and requirements in all respects. To be reimbursed for furnishing services to New Mexico medicaid recipients, out-of-state or border providers must complete the New Mexico medical assistance program provider participation application and have the application approved by the New Mexico medical assistance division (MAD).

[A. Out of state providers are those providers who render services in an area more than 100 miles from the New Mexico border (Mexico excluded). Border providers, those providers located within 100 miles of the New Mexico border (Mexico excluded), are subject to the rules governing the provision of services for in-state providers.

B. The claim filing limit for out of state and border providers is 120 days.]

A. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, a licensed practitioner or facility that meets applicable requirements is eligible to be reimbursed for furnishing covered services to an eligible program recipient. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. The following providers are eligible to apply for a provider participation agreement, bill and receive reimbursement for furnishing medical services:

(1) border area and out-of-state providers licensed by or certified by their respective states to practice medicine or osteopathy [42 CFR Section 440.50 (a)(1)(2)]; and other providers licensed or certified by their state to perform services equivalent to those covered by the medical assistance programs in New Mexico; practices or groups formed by these individuals may also receive reimbursement for services;

(2) border providers within 100 miles of the New Mexico state border (Mexico excluded), are subject to the rules

governing the provision of services for an in-state provider; and

(3) out-of-state providers more than 100 miles from the New Mexico state border (Mexico excluded).

B. Once enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement a provider is bound by the provisions of the MAD provider participation agreement.

[2/1/95; 8.302.4.10 NMAC - Rn, 8 NMAC 4.MAD.704.1 & A, 8/14/08]

8.302.4.11 PROVIDER RESPONSIBILITIES: [Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, General Provider Policies. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services provided to recipients. See 8.302.1 NMAC, General Provider Policies.] A provider who furnishes services to medicaid and other health care program eligible recipients must comply with all federal and state laws and regulations relevant to the provision of services as specified in the MAD provider participation agreement. A provider must also conform to MAD program rules and instruction, as updated. A provider is also responsible for following coding manual guidelines and MS correct coding initiatives, including not improperly unbundling or upcoding services. A provider must verify that individuals are eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient. [2/1/95; 8.302.4.11 NMAC - Rn, 8 NMAC 4.MAD.704.2 & A, 8/14/08]

8.302.4.12 COVERED OUT-OF-STATE SERVICES:

[A. Medicaid covers medical services furnished by out of state

providers only when:

(1) recipients are out of the state at the time the services are needed and the delivery of services is on an emergency or urgent basis; services must be medically necessary to stabilize the recipient's health or prevent significant adverse health effects, including preventable hospitalization;

(2) care is medically necessary for eligible foster children placed by the state of New Mexico in out-of-state homes or institutions;

(3) durable medical equipment, medical supplies, prosthetics or orthotics are purchased from out-of-state vendors;

(4) clinical laboratory tests are performed by out-of-state laboratories; or

(5) medical services or procedures considered medically necessary are not available in the state of New Mexico; prior approval is required for all services which are not available in New Mexico.] MAD covers services and procedures furnished by out-of-state providers when medically necessary for the diagnosis and treatment of an illness or injury as indicated by the eligible recipient's condition only when one or more of the following conditions are met.

A. An eligible recipient is out-of-state at the time the services are needed and the delivery of services is of an emergent or urgent nature. Services must be medically necessary to stabilize the eligible recipient's health and prevent significant adverse health effects, including preventable hospitalization. Claims for such services are subject to pre-payment or post-payment reviews to assure the emergent or urgent need for the services.

B. On-going services provided by a medical assistance program within the state continue to be necessary when the eligible recipient is visiting another state.

C. Care is medically necessary for eligible recipient foster children placed by the state of New Mexico in out-of-state homes or institutions.

D. Durable medical equipment, medical supplies, prosthetics or orthotics are purchased from out-of-state vendors.

E. Clinical laboratory tests, radiological interpretations, professional consultations or other services are performed by out-of-state laboratories but do not require the eligible recipient to leave the state.

F. Medical services or procedures considered medically necessary are not available in the state of New Mexico. All services that are not available in New Mexico require prior authorization when provided by an out-of-state provider.

G. Services, such as per-

sonal assistance, are needed by an eligible recipient out-of-state if that recipient is eligible to receive services through a medicaid home and community-based services waiver program and is traveling to another state. [2/1/95; 8.302.4.12 NMAC - Rn, 8 NMAC 4.MAD.704.3 & A, 8/14/08]

8.302.4.13 NON COVERED SERVICES: [Services furnished by out-of-state or border providers are subject to the limitations and coverage restrictions which exist for other medicaid services. See 8.301.3 NMAC, *General Noncovered Services*. Medicaid does not cover the following specific services when furnished by an out-of-state and/or border provider:

A. services furnished outside the boundaries of the United States;

B. services furnished in out-of-state or border nursing facilities and intermediate care facilities for the mentally retarded, or outpatient rehabilitation services; and

C. psychosocial rehabilitation services provided to recipients under twenty-one (21) in non-accredited residential treatment centers or group homes.] Services furnished by an out-of-state or border provider are subject to the limitations and coverage restrictions which exist for other services rendered in-state as stated in the relevant administrative, provider, and other services sections of the MAD program policy manual. In addition, MAD programs do not cover the following specific services when furnished by an out-of-state or border provider:

A. services furnished outside the boundaries of the United States; and

B. services furnished in an out-of-state or border area nursing facility or intermediate care facility for the mentally retarded.

[2/1/95; 8.302.4.13 NMAC - Rn, 8 NMAC 4.MAD.704.4 & A, 8/14/08]

8.302.4.14 OUT-OF-STATE HOSPITAL SERVICES: All out-of-state hospital, and other residential service claims are subject to prepayment review or periodic re-authorization by MAD or its designee for medical necessity and length of stay, in addition to requiring authorization for the initial placement.

[2/1/95; 8.302.4.14 NMAC - Rn, 8 NMAC 4.MAD.704.32 & A, 8/14/08]

8.302.4.15 PRIOR [APPROVAL] AUTHORIZATION AND UTILIZATION REVIEW: [All medicaid services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished

and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Approval and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing.

A. Prior approval: Certain procedures or services can require prior approval from MAD or its designee. Services for which prior approval was obtained remain subject to utilization review at any point in the payment process.

B. Eligibility determination: Prior approval of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

C. Reconsideration: Providers who disagree with prior approval request denials or other review decisions can request a re-review and a reconsideration. See Section 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

All MAD services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished, and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, a provider receives instructions on how to access utilization review documents necessary for prior approval and claims processing.

A. Prior authorization: Certain procedures or services can require prior approval from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process. A service provided through an out-of-state or border provider is subject to the same prior authorization and utilization review requirements, which exist for the service when not provided out-of-state.

B. Eligibility determination: Prior authorization of services does not guarantee an individual is eligible for medicaid and other health care programs. A provider must verify that an individual is eligible for a specific program at the time services are furnished and must determine if the eligible recipient has other health insurance.

C. Reconsideration: A provider who disagrees with prior authorization request denials and other review decisions can request a re-review and a reconsideration. See MAD-953 [8.350.2 NMAC], *Reconsideration of Utilization Review Decisions*. [2/1/95; 8.302.4.15 NMAC - Rn, 8 NMAC

4.MAD.704.5 & A, 8/14/08]

8.302.4.16 OUT-OF-STATE BILLING OFFICES: Services furnished within the state or border areas are subject to the [~~regulations~~] rules for in-state providers even if the billing or administrative office is outside the state. [2/1/95; 8.302.4.16 NMAC - Rn, 8 NMAC 4.MAD.704.5 & A, 8/14/08]

8.302.4.17 REIMBURSEMENT: [~~Out of state providers must submit claims for reimbursement on the claim form appropriate for the service type furnished to the recipient. See 8.302.2 NMAC, Billing for Medicaid Services. Once enrolled, providers receive billing instructions and other material from MAD for processing of claims.~~

~~**A.** Reimbursement for out-of-state providers is made at the lesser of the following:~~

- ~~(1) the provider's billed charge;~~
- ~~or~~
- ~~(2) the MAD fee schedule for the specific services or procedure when performed by an in-state provider.~~

~~**B.** The provider's billed charges must be their usual and customary charges for services.~~

~~**C.** "Usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.~~

~~**D.** Inpatient services furnished by out of state acute care hospitals are reimbursed at seventy percent of billed charges. All hospital billing must reflect the hospital's usual and customary charge for the furnished services. To be considered for reimbursement, inpatient claims must have a copy of the discharge summary attached.~~

~~**E.** Outpatient services furnished by out of state hospitals, not subject to reimbursement limitations, are reimbursed at seventy seven percent of billed charges. All hospital billings must reflect the hospital's usual and customary charge for the services furnished.~~

~~**F.** Out of state hospital emergency room claims must have the emergency room report attached to the claim.]~~

Reimbursement to an out-of-state or border provider is made at the same rate as for an in-state provider except as otherwise stated in the relevant specific providers and services sections of the MAD program rules manual.

A. The billed charge must be provider's usual and customary charge for the service or procedure.

B. "Usual and customary" charge refers to the amount that the provider charges the general public in the majority of

cases for a specific procedure or service.

[2/1/95; 8.302.4.17 NMAC - Rn, 8 NMAC 4.MAD.704.6 & A, 8/14/08]

NEW MEXICO RACING COMMISSION

This is an amendment to 16.47.1 NMAC, Sections 8, 11, and 13 effective 08/14/2008.

16.47.1.8 GENERAL PROVISIONS:

A. LICENSES REQUIRED: A person as defined by Subsection P, Paragraph (7) of 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the commission, or be employed by an association who is a gaming operator, without a valid license issued by the commission.

(1) License categories shall include the following and others as may be established by the commission: **GROUP A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. **GROUP B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **GROUP C** - supervisory racing officials. **GROUP D** - persons employed by the association, or employed by a person or concern contracting with the association, to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **GROUP E** - racetrack employees and authorized agents.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Announcer	\$55.00
Assistant General Manager	\$80.00
Assistant Racing Secretary	\$15.00
Association	\$80.00
Auditor, Official	\$55.00
Authorized Agent	\$ 5.00
Clerk of Scales	\$15.00
Clocker	\$15.00
Club, Racetrack	\$80.00
Concession Employee	\$ 5.00
Concession Operator	\$80.00
Custodian of Jockey Room	\$15.00
Director or Corporate Officer	\$80.00
Director of Operations	\$55.00
Director of Racing	\$55.00
Exercise Person	\$15.00
General Manager	\$80.00
Groom	\$ 5.00
Horseman's Bookkeeper	\$15.00
Identifier (Horse)	\$15.00
Janitor	\$ 5.00
Jockey (3 year)	\$100.00
Jockey (1 year)	\$80.00
Jockey (Apprentice) (3 year)	\$100.00
Jockey Apprentice) (1 year)	\$80.00
Jockey Agent	\$55.00
Jockey Valet	\$ 5.00
Laborer	\$ 5.00
Official Personnel (specify position)	\$ 5.00
Official Veterinarian (3 year)	\$100.00
Official Veterinarian (1 year)	\$80.00
Outrider	\$15.00
Owner (3 year)	\$100.00
Owner (1 year)	\$80.00
Paddock Judge	\$15.00
Pari Mutuel Employee	\$ 5.00
Pari Mutuel Manager	\$55.00
Placing Judge	\$15.00
Photo Employee	\$ 5.00
Plater	\$80.00

Pony Person	\$ 5.00
Private Barns	\$ 80.00
Racing Secretary-Handicapper	\$55.00
Security Chief	\$55.00
Security Staff	\$ 5.00
Simulcast Company Employee	\$ 5.00
Simulcast Coordinator	\$55.00
Simulcast Operator	\$80.00
Special Event, 1 or 2 day	\$100.00
Stable Name (3 year)	\$100.00
Stable Name (1 year)	\$80.00
Stable Superintendent	\$55.00
Starter	\$55.00
Starter Assistant	\$15.00
Ticket Seller (Admissions)	\$ 5.00
Timer	\$15.00
Totalisator Employee	\$ 5.00
Totalisator Operator	\$80.00
Track Maintenance, Employee	\$ 5.00
Track Physician	\$80.00
Track Superintendent	\$55.00
Trainer (3 year)	\$100.00
Trainer (1 year)	\$80.00
Trainer Assistant	\$15.00
Veterinarian Assistant	\$15.00
Veterinarian, Practicing (3 year)	\$100.00
Veterinarian, Practicing (1 year)	\$80.00
Veterinarian, Racing (3 year)	\$100.00
Veterinarian, Racing (1 year)	\$80.00
Watchman	\$ 5.00

(3) License applicants may be required to furnish to the commission a set(s) of fingerprints and a recent photograph and may be required to be reprinted or rephotographed periodically as determined by the commission. The requirements for fingerprints may be fulfilled by submission of prints or verification of such, accepted by a member jurisdiction of the racing commissioners' international, and obtained within two years for annual licenses and four years for three-year licenses. License applicants for owner, trainer or jockey will only need to be fingerprinted upon first application, or if there is a break of three years or more in license continuity. If the commission determines it is necessary, reprinting will be undertaken on the basis of alleged criminal activity on the part of the owner, trainer or jockey.

(4) License applicants for groom, watchman, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

B. MULTI-STATE LICENSING INFORMATION: Applicants may be permitted to submit an association of racing commissioners international, inc. (RCI) or north American pari mutuel regulators association (NAPRA) multi-state license information form and RCI fingerprint card and thereby obtain a criminal records check that can be used in other jurisdictions.

C. AGE REQUIREMENT:

(1) Applicants for licensing, except owners, must be a minimum of 14 years of age, but no one under the age of 16 may be licensed as a pony person or exercise person and no one under the age of 18 may be licensed as an authorized agent or jockey agent.

(2) A licensee must be a minimum of 14 years of age to handle a horse in the paddock.

D. CONSENT TO INVESTIGATION: The filing of an application for license shall authorize the commission to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications, and to verify information provided by the applicant.

E. CONSENT TO SEARCH AND SEIZURE: By acceptance of a license, a licensee consents to search and inspection by the commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state and federal law.

F. APPROVAL OR RECOMMENDATIONS BY STEWARDS: The commission may designate categories of licenses, which shall require stewards' prior approval or recommendation. Prior approval will include exercise riders, pony riders, and apprentice jockeys.

G. EMPLOYER RESPONSIBILITY:

(1) The employment of any unlicensed person under the jurisdiction of the commission is prohibited.

(2) Every employer shall report the discharge of any licensed employee in writing to the stewards, including the person's name and occupation.

H. EMPLOYER ENDORSEMENT OF LICENSE APPLICATIONS: The license application of an employee must be signed by the employer.

I. FINANCIAL RESPONSIBILITY:

(1) All persons engaged in racing shall maintain financial responsibility in matters pertaining to racing and the Parental Responsibility Act.

(2) Any person licensed by the commission may file a financial responsibility complaint against another licensee. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due in connection with his/her operations as a licensee. A judgment from a civil court, which has been issued within one year of the date of the complaint, may be honored by the stewards as long as at least the defendant is a licensee.

J. LICENSE REFUSAL: The commission may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

K. LICENSE DENIAL:

(1) The commission may formally deny an application in accordance with these rules.

(2) An application denied, if requested by the applicant, shall be reported in writing to the applicant denied stating the reasons for denial, and the date when a reapplication may be submitted.

(3) An application denied may be reported to the association of racing commissioners international, inc. and north American pari mutuel regulators association whereby other racing jurisdictions shall be advised.

L. GROUNDS FOR REFUSAL, DENIAL, SUSPENSION, OR REVOCATION OF LICENSE:

(1) The commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

- (a) has been convicted of a felony;
- (b) has been convicted of violating any law regarding gambling or a controlled dangerous substance;
- (c) who is unqualified, by experi-

ence or otherwise, to perform the activities for which a license is required, or who fails to pass an examination prescribed by the commission;

(d) has failed to disclose or falsely states any information required in the application;

(e) has been found in violation of rules governing racing in this state or other jurisdictions;

(f) has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(g) has had a license denied, suspended, or revoked by any racing jurisdiction;

(h) is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting; interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to danger anywhere on the racetrack grounds; the fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

(i) demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused; for the purpose of this sub-section, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within thirty (30) days of the date of the notice, the applicant provides the commission with a certified statement from the department that he/she is in compliance with a judgment and order for support;

(j) is ineligible for employment pursuant to federal or state law concerning age or citizenship.

(2) A license suspension or revocation shall be reported in writing to the applicant and the association of racing commissioners international, inc., whereby other racing jurisdictions shall be advised.

(3) Any license denied, suspended or revoked by the commission pursuant to these rules shall state the time period for the effect of its ruling. When the action is taken for a misdemeanor or felony conviction, the time period shall be the period of the licensee's or applicant's imprisonment; or if not imprisoned, the period of probation, deferral, unless the person can satisfy the commission of sufficient rehabilitation. This rule shall also apply to licensees who voluntarily turn in their license because of, or in anticipation of, a conviction.

M. DURATION OF LICENSE:

(1) All annual licenses, with the

exception of the authorized agent, issued by the commission expire one year from the last day of the month issued. All triennial licenses expire three years from the last day of the month issued.

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

N. CHANGES IN APPLICATION INFORMATION:

(1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspension of 10 days or more and license revocations in other jurisdictions.

(2) A child or spouse pass, a change in current legal name, or badge replacement, requires a completed application and payment of a photo badge fee.

O. TEMPORARY LICENSES:

(1) The commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the commission with the exception of casino employees and also food concession employees who work in non-restricted areas.

(2) The commission may grant an association, who is not conducting a live horse race meeting, a grace period of thirty (30) days to obtain the required licenses for its simulcast employees. An association shall provide to the commission each month, an employment roster for all simulcast employees.

P. MORE THAN ONE LICENSE: More than one license to participate in horse racing may be granted except when prohibited by these rules due to a potential conflict of interest.

Q. CONFLICT OF INTEREST:

(1) The commission may refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the commission or stewards find to be a conflict of interest.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

(3) A person who is licensed as an owner or trainer in a horse registered for racing at a race meeting in this jurisdiction shall not be employed or licensed as a jockey, apprentice jockey; jockey agent; racing official; assistant starter; track maintenance supervisor; jockey room custodian; valet; outrider; racing chemist, testing laboratory employee, or security personnel.

R. LICENSE PRESENTATION:

(1) A person must present an appropriate license or other authorization issued by the commission to enter a restricted area. The commission may issue authorization to the spouse or child of a licensed owner, trainer or jockey to enter a restricted area.

(2) The stewards may require visible display of a license while the licensee is engaged in the duty for which he/she is licensed and on the association grounds unless the licensee is mounted on a horse.

(3) A license may only be used by the person to whom it is issued.

S. TEMPORARY ACCESS AUTHORITY: Track security may authorize unlicensed persons temporary access to restricted areas. Such person shall be identified and their purpose and credentials verified and approved in writing by track security. Such authorization or credential may only be used by the person to whom it is issued.

T. KNOWLEDGE OF RULES: A licensee shall be knowledgeable of the rules of the commission; and by acceptance of the license, agrees to abide by the rules.

U. PROTECTION OF HORSES:

(1) Each person licensed by the commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

(2) No licensee or other person under the jurisdiction of the commission shall subject or permit any animal under his/her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

V. RESTRICTIONS: Beginning one hour before post time, the use of cellular telephones will be prohibited in the paddock, on the racetrack surface and winner's circle until the last race is official. Cellular telephone use will also be prohibited behind the starting gate during training and racing hours. The association shall be responsible for posting notices of the prohibition in these restricted areas.

[16.47.1.8 NMCA - Rp, 16 NMCA 47.1.8, 03/15/2001, A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 02/14/2002; A, 11/14/2002; A, 03/31/2003; A, 07/15/2003; A, 09/29/2006; A, 03/30/2007; A,

08/14/2008]

16.47.1.11 OWNER'S AUTHORIZED AGENTS**A. LICENSES REQUIRED:**

(1) A written authorized agent appointment, acknowledged before a notary public must be approved by the board of stewards.

(2) A written appointment must be filed with the commission office for each owner represented.

(3) A written instrument signed by the owner shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument must be acknowledged before a notary public.

(4) If the written instrument is a power of attorney it shall be filed with the commission office.

(5) Any changes must be made in writing and filed as provided in Subsection A, Paragraph (3) of 16.47.1.11 NMAC above.

(6) All authorized agent appointments shall expire December 31st each year or when terminated by the owner in writing, acknowledged before a notary public, and filed with the commission office whereupon the agency appointment shall not be valid.

(7) An authorized agent shall be licensed by the commission as such and must be a minimum of 18 years old.

B. POWERS AND DUTIES:

(1) An authorized agent may perform on behalf of the licensed owner-principle all acts related to racing, as specified in the agency appointment that could be performed by the principle if such principle were present.

(2) In executing any document on behalf of the principle, the authorized agent must clearly identify the authorized agent and the owner-principle.

(3) When an authorized agent enters a claim for the account of a principle, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

(4) Authorized agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary.

[16.47.1.11 NMAC - Rp, 16 NMAC 47.1.11, 03/15/2001; A, 03/30/2007; A, 08/14/2008]

16.47.1.13 JOCKEY AGENTS A. ELIGIBILITY:

(1) An applicant for a license as a jockey agent must be a minimum of 18 years of age, demonstrate to the stewards that he/she has a contract for agency with at least one jockey who has been licensed by the commission; and be qualified, as determined by the stewards or other commission designee, by reason of experience, background and knowledge; a jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an interview or oral examination.

(2) Applicants not previously licensed as a jockey agent shall be required to pass a written and oral examination.

B. LIMITS ON CONTRACTS: A jockey agent may serve as agent for no more than three jockeys and shall secure a license as a jockey agent. A jockey agent must register his/her riders with the stewards upon his/her arrival at each individual meet and must report any changes during the meet.

C. RESPONSIBILITY: All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made, such records being subject to examination by the stewards at any time.

D. PROHIBITED AREAS: A jockey agent is prohibited from entering the jockey room, winner's circle, racing strip, paddock or saddling enclosure during the hours of racing, unless permitted by the stewards.

E. AGENT WITHDRAWAL:

(1) When any jockey agent withdraws from representation of a jockey, the jockey agent shall immediately notify the stewards and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

(2) A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

[16.47.1.13 NMAC - Rp, 16 NMAC 47.1.13, 03/15/2001; A, 05/30/2003; A, 08/14/2008]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

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

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