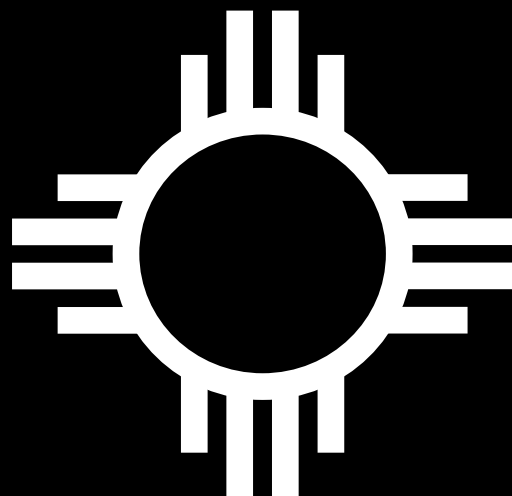


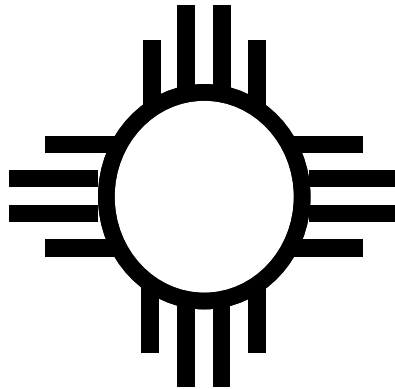
NEW MEXICO REGISTER



**Volume XIX
Issue Number 20
October 30, 2008**

New Mexico Register

Volume XIX, Issue Number 20
October 30, 2008



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

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2008

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New Mexico Register

Volume XIX, Number 20

October 30, 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.

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

On **December 10, 2008 at 5:30 PM**, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) at the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102.

The hearing will address a proposal to repeal current 20.11.41 NMAC, *Authority to Construct*; adopt proposed replacement 20.11.41 NMAC, *Stationary Source Permits*; and incorporate replacement 20.11.41 NMAC into the State Implementation Plan for air quality, and for a combined hearing. The City of Albuquerque, Environmental Health Department, Air Quality Division (AQD) is proposing these amendments to update the outdated current regulation; to make it consistent with applicable requirements of the New Mexico Air Quality Control Act; to incorporate substantive provisions of the EIB construction permits regulation; to codify currently-practiced outreach, notice and other public information hearing processes regarding pending permit applications that are not included in the existing regulation; and to improve aspects of the permitting process resulting from regulation review.

The proposed 20.11.41 NMAC incorporates changes that include the following areas: applicability; definitions; application requirements; public notice; increased public participation; permit decisions and appeals; basis for permit denial; permit conditions; permit suspension or revocation; relocation of portable stationary sources; administrative and technical permit revisions; permit reopening, revision and re-issuance; and accelerated permit review.

Following the combined hearing, the Air Board will convene its regular monthly meeting during which they are expected to consider repealing the current 20.11.41 NMAC, *Authority to Construct*; adopting proposed replacement 20.11.41 NMAC, *Stationary Source Permits*; and incorporat-

ing the replacement of 20.11.41 NMAC into the State Implementation Plan for air quality.

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

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994, Bernalillo County Ordinance 94-5, Section 6 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent (NOI) to testify before 5:00pm on November 25, 2008 to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Room 3023, 400 Marquette Avenue NW. The NOI shall identify the name, address, and affiliation of the person testifying.

In addition, written comments to be incorporated into the public record for the December 10, 2008 hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on December 3, 2008. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to jamend@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Ms. Janice Amend electronically at jamend@cabq.gov, by phone (505) 768-2601, or by referring to the following web address: <http://eweb.cabq.gov/ehd/aqcb/default.aspx> under Draft Regulations.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE RADIATION PROTECTION RULES, 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, 20.3.7 NMAC, 20.3.13 AND 20.3.15 NMAC.

The New Mexico Environmental Improvement Board ("EIB") will hold a public hearing on January 5, 2009 at 10:00 a.m., and continuing thereafter as necessary, in the Porter Hall, New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505. The hearing location may change prior to January 5, 2009 and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/eib/index.html> prior to the hearing. The purpose of the hearing is to consider proposed amendments to the New Mexico Radiation Protection Rules, 20.3.1 NMAC - General Provisions, 20.3.3 NMAC - Licensing of Radioactive Materials, 20.3.4 NMAC - Standards for Protection Against Radiation, 20.3.7 NMAC - Medical Use of Radionuclides, 20.3.13 NMAC - Licensing Requirements for Land Disposal of Radioactive Waste, and 20.3.15 NMAC - Licenses and Radiation Safety Requirements for Irradiators. The New Mexico Environment Department is the proponent of these regulations.

The proposed amendments will repeal and replace 20.3.1, 20.3.3, 20.3.4, and 20.3.7 NMAC, will amend 20.3.13 and 20.3.15 NMAC, and are necessary to conform to changes mandated by the federal Nuclear Regulatory Commission ("NRC").

Please note formatting and minor technical changes in the regulations may occur. In addition, the EIB may make other amendments as necessary to accomplish the purpose of protecting public health and safety in response to public comments submitted to the EIB and evidence presented at the hearing.

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the EIB:

Joyce Medina, EIB Administrator
Harold Runnels Building, 1190 St. Francis Drive, N2150
Santa Fe, New Mexico, 87502
(505) 827-2425, Fax (505) 827-2836

The proposed amendments have been posted to the New Mexico Environment Department Radiation Control Bureau webpage at <http://www.nmenv.state.nm.us/nmrbc/regs.html>. Parties interested in receiving a printed copy should contact Daniela Bowman by email at: daniela.bowman@state.nm.us or by phone at (505) 476-3061. Written comments regarding the new rules may be addressed to Ms. Medina at the above address, and should reference docket number EIB 08-16(R).

The hearing will be conducted in accordance with NMSA 1978, Section 74-1-9 of the Environmental Improvement Act, the Rulemaking Procedures of the Environmental Improvement Board, 20.1.1 NMAC, and other applicable procedures. A copy of the Rulemaking Procedures for the EIB may be obtained from Ms. Medina; they are also available on the EIB's website at <http://www.nmenv.state.nm.us/eib/regulations.htm>.

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

Persons wishing to present technical testimony during the hearing must file with the EIB a written notice of intent to do so. Notices must be filed with Joyce Medina at the address above by 5:00 p.m. on December 22, 2008 and should reference the date of the hearing and docket number EIB 08-16(R).

The notice of intent shall:

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

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley at the Personnel Services Bureau by December 22, 2008. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a series of public hearings regarding rule changes at the following sites:

Gallup: Wednesday, November 12, 2008 (9 am to 5 p.m. - see attached agenda for discussion schedule), John F. Kennedy Middle School, Gallup-McKinley County Public Schools, 600 South Boardman Drive, Gallup, NM;

Albuquerque: Monday, November 17, 2008 (9 am to 5 p.m. - see attached agenda for discussion schedule), DeLayo/Martin Community Board Room, Albuquerque Public Schools, 6400 Uptown Blvd. NE, Albuquerque, NM;

Las Cruces: Monday, November 24, 2008 (9 am to 5 p.m. - see attached agenda for discussion schedule), Conference Room A, Administration Office, Las Cruces Public Schools, 505 South Main - Loretto Towne Centre, Las Cruces, NM;

Roswell: Tuesday, November 25, 2008 (9 am to 5 p.m. - see attached agenda for discussion schedule), Board Room, Administration Office, Roswell Independent Schools, 300 North Kentucky, Roswell, NM;

Santa Fe: Monday, December 1, 2008 (9 am to 5 p.m. - see attached agenda for discussion schedule), Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, NM.

The purpose of these hearings will be to obtain input on the following rules regarding Standards for Excellence for all public schools, state educational institutions and educational programs conducted in state institutions other than the New Mexico Military Institute:

Rule Number	Rule Name	Proposed Action
6.30.2 NMAC	Standards for Excellence	Repeal Rule
6.29.1 NMAC	Standards for Excellence General Provisions	Replace
6.29.2 NMAC	Arts Education	Replace
6.29.3 NMAC	Career and Technical Education	Replace
6.29.4 NMAC	English Language Arts	Replace
6.29.5 NMAC	English Language Development	Add
6.29.6 NMAC	Health Education	Replace
6.29.7 NMAC	Mathematics	Replace
6.29.8 NMAC	Modern, Classical and Native Languages	Replace
6.29.9 NMAC	Physical Education	Replace
6.29.10 NMAC	Science	Replace
6.29.11 NMAC	Social Studies	Replace

Interested individuals may testify either at any of the public hearings or may submit written comments regarding the proposed rulemaking to Dr. Kristine M. Meurer, School and Family Support Bureau, New Mexico Public Education Department, CNM Workforce Training Center - Room 201, 5600 Eagle Rock Avenue, NE, Albuquerque, NM 87113 (kristine.meurer@state.nm.us) (505-222-4759 fax).

Written comments must be received no later than 5:00 PM on Tuesday, December 2, 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://www.ped.state.nm.us>) or obtained from Dr. Kristine M. Meurer. The proposed rule changes will be made available at least thirty (30) days prior to the December 1, 2008 hearing.

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

Agenda
Standards for Excellence Public Hearings

Time	AGENDA
9:00 - 9:15	Introduction
9:15 - 12:00	Standards for Excellence Part I: Pt.1 6.29.1 - Standards for Excellence General Provisions Definitions Implementation of EPSS Procedural Requirements: Local Board Duties Superintendent Duties Licensed Staff Student Interventions Records and Reports Organization of Grade Levels Student/Staff Caseloads in Special Education Length of School Day
12:00 - 1:00	LUNCH BREAK
1:00 - 3:00	Pt.1 6.29.1 - Standards for Excellence General Provisions (continued): Procedural Requirements: Graduation Requirements Next Step Plans Course Information Excuses for Physical Education Special Education -Diploma Statewide Accountability Program Student Assessment System Special Education Testing Emergency Drills School Facilities and Grounds Waivers Program Requirements Future Changes in the Law
3:00 - 4:00	Content Standards Part II - Part VI Pt.2 6.29.2 - Arts Pt.3 6.29.3 - Career and Technical Education Pt.4 6.29.4 - English Language Arts Pt.5 6.29.5 - English Language Development Pt.6 6.29.6 - Health Education
4:00 - 5:00	Part VII - Part XI Pt.7 6.29.7 - Math Pt.8 6.29.8 - Modern, Classical & Native Languages Pt.9 6.29.9 - Physical Education Pt.10 6.29.10 - Science Pt.11 6.29.11 - Social Studies
5:00	Adjournment

**NEW MEXICO PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO
SUPERINTENDENT OF INSURANCE**

DOCKET NO. 08-00312-IN

**IN THE MATTER OF PROPOSED
RULE ON PREFERRED RISK MORTALITY TABLES
FOR PRENEED INSURANCE**

**NOTICE OF PROPOSED RULEMAKING, HEARING AND PROCEDURAL
ORDER**

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") pursuant to NMSA 1978, Section 59A-2-9, proposes to promulgate at 13.9.19 NMAC, the Preferred Risk Mortality Tables for Preneed Insurance. The Superintendent, being otherwise fully advised, **FINDS and CONCLUDES THAT:**

1. This new model regulation was passed unanimously at the most recent NAIC meeting. Adoption of this model regulation is essential to maintain proper reserves for preneed life policies and keep equitable the current tax treatment of those necessary reserves.

2. The need for this regulation was clearly identified by a recent Society of Actuaries (SOA) study of preneed insurance mortality. The SOA found that the 2001 CSO table does not adequately reserve for the mortality experience of preneed insurance. When the inadequacy of the 2001 CSO mortality table was presented to the Life and Health Actuarial Task Force (LAHTF), they developed this model regulation. It allows the continued use of the 1980 CSO mortality table thereby avoiding an inadequate reserving problem caused by the mandatory use of the 2001 CSO table.

3. The Model allows companies that have not implemented a move from the 1980 CSO tables to continue to use them and those that have moved to the 2001 tables to have a transition period to return to the 1980 tables.

COPIES OF PROPOSED RULEMAKING ARE AVAILABLE:

a. by downloading from the Public Regulation Commission's website, www.nmprc.state.nm.us, then clicking on "Proposed Rules," "Insurance," Docket No. 08-00312-IN, "IN THE MATTER OF PROPOSED RULE ON PREFERRED RISK MORTALITY TABLES FOR PRENEED INSURANCE"

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$9.25 made payable to the Public Regulation Commission to cover the cost of copying; or

c. for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

IT IS FURTHER ORDERED that an **informal public hearing** pursuant to Section 59A-4-18 NMSA 1978 be held on Monday, November 24, 2008 at 9:30 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rulemaking. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file **written comments** on the proposed rulemaking on or before November 15, 2008. An original and (2) two copies of written comments and suggested changes concerning the Preferred Risk Mortality Tables for Preneed Insurance must be mailed or delivered to: NM Public Regulation Commission – Docketing Division, ATTN: Mariano Romero, RE: Proposed Repeal and Replacement of Rule in Docket No. 08-00312-IN, Public Regulation Commission's Docketing Office, Room 406, PO Box 1269, Santa Fe, NM 87504-1269. Telephone: (505) 827-4368. If possible, please also e-mail a copy of written comments as an attachment in Microsoft Word format to Melinda.Silver@state.nm.us, or call her at 505-827-6904 to notify her that comments were submitted to the Docketing Office. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, 1120 Paseo de Peralta, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

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

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language

interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, may contact the Docketing Office at (505) 827-4368. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should be addressed to Mr. Romero.

DONE, this 6th day of October, 2008.

**NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

MORRIS J. CHAVEZ, Superintendent of Insurance

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY**

**TRAINING AND RECRUITING
DIVISION**

Law Enforcement Academy

Notice

**NEW MEXICO DEPARTMENT OF
PUBLIC SAFETY
NM LAW ENFORCEMENT
ACADEMY
BOARD MEETING AND PUBLIC
HEARING**

On Monday, December 8, 2008, the New Mexico Law Enforcement Academy Board will hold a work session from 1:00 p.m. to 5:00 p.m.

On Tuesday, December 9, 2008, the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting to include a Public Hearing. The Public Hearing will include 10.29.8 Officer Transition Program, 10.29.1.10 Qualifications for Admission to the Academy.

The NMLEA Work Session, Regular Board Meeting and Public Hearing will be held at the Hilton Albuquerque, 1901 University Boulevard NE, Albuquerque New Mexico

Copies of the Work Session, Regular Board Meeting Agenda's and proposed rule changes may be obtained by accessing our website at www.dps.nm.org/training or by calling Arthur Ortiz at (505) 827-9290, Gil Najar at (505) 827-9265 or Suzanne Vigil at (505) 827-9255.

**NEW MEXICO RACING
COMMISSION**

**NEW MEXICO RACING
COMMISSION
NOTICE OF RULEMAKING AND
PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held at the Turf Club room at Zia Park Racetrack, 3901 West Millen Drive, Hobbs, New Mexico. The public session will begin at 9:30 o'clock a.m. on Thursday, October 23, 2008. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.5.13(A) (regarding Toe Grabs).

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

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

Julian Luna
Agency Director

Dated: October 14, 2008

**NEW MEXICO REAL
ESTATE COMMISSION**

Commission Schedules Rule Hearing for Nov. 14, 2008
At Greater Albuquerque Association of Realtors Offices

The Real Estate Commission has scheduled a public hearing on proposed changes to the Commission Rules for Friday, November 14, 2008 at 9 a.m. at the offices of the Greater Albuquerque Association of Realtors, 1635 University Boulevard NE in Albuquerque.

Copies of the proposed changes will be posted on the Commission web site. Brokers and members of the public wishing to receive paper copies of the proposed changes should call the Commission office at (505) 222-9820 between 8 a.m. and 5 p.m. Monday through Friday.

Brokers and members of the public attending the hearing will have an opportunity to testify or comment on the proposed changes, as well as suggest additional changes to the rules.

Brokers and members of the public not able to attend the public hearing may submit written comments to the New Mexico Real Estate Commission, 5200 Oakland Avenue NE, Albuquerque, New Mexico 87113, Attn: Wayne W. Ciddio, Executive Secretary, or email comments to wayne.ciddio@state.nm.us.

After the rule hearing, the Commission will file final changes to the rules with the office of State Records on Archives by no later than December 1.

The new rules will become effective January 1, 2009.

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The New Mexico Taxation and Revenue Department proposes to adopt the following regulation:

Property Tax Code

3.6.5.41 NMAC Section 7-36-15 NMSA 1978

***(Methods of Determining Market Value
Affordable Housing)***

This proposal was placed on file in the Office of the Secretary on October 16, 2008. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposal, if filed, will be filed as required by law on or about December 31, 2008.

A public hearing will be held on the proposal on Wednesday, December 3, 2008, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposal are available upon request; contact (505) 827-0928. Comments on the proposal are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposal should be submitted to the Taxation and Revenue Department, Director of Tax

Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before December 3, 2008.

3.6.5.41 METHODS OF DETERMINING MARKET VALUE OF AFFORDABLE HOUSING

A. Application for reduced valuation of affordable housing.

A property owner shall file an application with the county assessor, in a form prescribed by the division, to qualify for a reduction in property value pursuant to Paragraph 2 of Subsection B of Section 7-36-15 NMSA 1978.

B. Value of residential housing property affected by affordable housing subsidies; taxpayer required documents. By May 1 of each property tax year, a property owner of residential housing affected by an affordable housing subsidy, covenant, or encumbrance imposed pursuant to a federal, state or local affordable housing program shall provide to the county assessor:

(1) a copy of each document that establishes the type, amount and term of the affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program; or a copy of the property owner's purchase agreement for the residential housing and a copy of the property owner's real estate closing agreement for the residential housing; and

(2) a written statement from the affordable housing program identifying the affordable housing subsidy, covenant or encumbrance and the balance of the remaining interest held by the affordable housing program in that subsidy, covenant or encumbrance as of the first day of the applicable property tax year.

C. Apartments classified as residential property. Property owners who own apartment buildings classified as residential property shall submit, in addition to documents required by this section, evidence satisfactory to the county assessor, of the amount and source of income per unit, including, but not limited to, federal Title VIII vouchers.

D. County assessor use of required documents. A county assessor shall use the documents submitted by a property owner in accordance with this section to determine the value of property for property taxation purposes pursuant to Sections 7-36-15 and 7-36-16 NMSA 1978. The county assessor shall use the documents to complete a statement of adjusted value that:

(1) is in a form prescribed by the division; and

(2) contains a calculation of the property owner's equity in the property, in accordance with Section 7-36-15 NMSA

1978, as of the first day of the applicable tax year; that calculation shall account for:

(a) the unencumbered market value of the property as provided in the notice of valuation mailed to the property owner by the county assessor in April of each property tax year;

(b) any decrease in the value that would be realized by the owner in a sale of the property because of the effects of any affordable housing subsidy, covenant, or encumbrance imposed pursuant to a federal, state or local affordable housing program that restricts the future use of the property or the resale price of the property or would otherwise prohibit the owner from fully benefiting, excluding shared appreciation features, from any enhanced value of the property; and

(c) applicable exemptions.

E. Title company provision of documents to property owners.

Title companies shall be encouraged to provide documents required in Subsection B of this section to property owners. A county assessor shall request each title company in its county to provide documents required in Subsection B of this section to the county assessor in accordance with applicable laws.

[3.6.5.41 NMAC - N, XXX]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following regulation:

Motor Vehicle Excise Tax Act

3.11.4.7 NMAC Section 7-14-4 NMSA 1978

(Definitions)

This proposal was placed on file in the Office of the Secretary on October 16, 2008. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposal, if filed, will be filed as required by law on or about December 31, 2008.

A public hearing will be held on the proposal on Wednesday, December 3, 2008, at 1:30 p.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible

copies of the proposal are available upon request; contact (505) 827-0928. Comments on the proposal are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposal should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before December 3, 2008.

3.11.4.7 DEFINITIONS:

A. "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty.

C. "NATO signatory" means a nation, other than the United States of America, that is a contracting party to the North Atlantic Treaty.

D. "Price paid" is the dollar amount to which the motor vehicle excise tax is applied and (except as provided in Section 7-14-4 NMSA 1978 if the price paid does not represent the value of the vehicle) is the total net purchase price paid by the buyer for the vehicle itself, including any deposit or down payment, at the time of sale. "Price paid" includes any charges to the buyer for accessories, transportation, delivery and dealer preparation. "Price paid" is reduced by the value of any vehicle trade-in and by any discounts or rebates that are applied to the buyer's balance due at time of sale. "Price paid" is also reduced by the value of any manufacturer's or other rebate that is contractually guaranteed to the buyer at time of sale, even though the rebate is received by the buyer at a later date.

[3/15/96; 3.11.4.7 NMAC - Rn, 3 NMAC 11.4.7, 12/14/00; A, XXX]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

STATEMENT OF REPEAL AND REPLACEMENT OF FORMER RULE

This statement regards the repeal and replacement of 8.11.5 NMAC governing Adult Protective Services Legal. The new proposed rule 8.11.5 NMAC shall repeal and replace the previous 8 NMAC 11.5 (filed 06/16/1997) that was promulgated by the Children, Youth and Families Department (effective July 1, 1997) because Adult Protective Services transferred from the Children, Youth and Families Department to the Aging and Long-Term Services Department on July 1, 2005. After public hearing on July 10, 2008, the Secretary of the Aging and Long-Term Services Department has considered comments to its proposed replacement rule 8.11.5 NMAC, Adult Protective Services Legal, and has adopted its final version, effective 10/30/08.

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 11 ADULT PROTEC- TIVE SERVICES PART 5 ADULT PROTEC- TIVE SERVICES LEGAL

8.11.5.1 ISSUING AGENCY: Aging and Long-Term Services Department - Adult Protective Services Division.
[8.11.5.1 NMAC - Rp, 8 NMAC 11.5.1, 10/30/08]

8.11.5.2 SCOPE: Protective services employees and general public.
[8.11.5.2 NMAC - Rp, 8 NMAC 11.5.2, 10/30/08]

8.11.5.3 STATUTORY AUTHORITY: Adult Protective Services Act, Section 27-7-14 et seq. NMSA 1978, as amended; Public Health Act, Section 24-1-5L, as amended; Probate Code, Section 45-5-301 et seq. NMSA 1978, as amended; Resident Abuse and Neglect Act, Section 30-47-1 et seq. NMSA 1978, as amended; Aging and Long-Term Services Act, Section 9-23-1 et seq. NMSA 1978, as amended.
[8.11.5.3 NMAC - Rp, 8 NMAC 11.5.3, 10/30/08]

8.11.5.4 DURATION: Permanent.
[8.11.5.4 NMAC - Rp, 8 NMAC 11.5.4, 10/30/08]

8.11.5.5 EFFECTIVE DATE: 10/30/08, unless a later date is cited at the end of a section.
[8.11.5.5 NMAC - Rp, 8 NMAC 11.5.5, 10/30/08]

8.11.5.6 OBJECTIVE: To establish guidelines for the provision of adult legal services by the department that are consistent with statutory authority and legal mandates.
[8.11.5.6 NMAC - Rp, 8 NMAC 11.5.6, 10/30/08]

8.11.5.7 DEFINITIONS:
A. "Ability to consent" means an adult's ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.

B. The "adult protective services (APS) attorney" is the attorney that represents the department in actions pursuant to the Adult Protective Services Act and federal and state constitutional, statutory and case law.

C. "Advance directives" include powers of attorney, living wills and written statements appointing surrogate health care decision makers under the Uniform Health Care Decisions Act (Section 24-7A-1 et seq. NMAC 1978 as amended) and the Mental Health Care Treatment Decisions Act (Section 24-7B-1 et seq. NMAC 1978 as amended).

D. An "affidavit" is a sworn statement of facts and accompanies the petition for an order. It is signed by any person who either has personal knowledge of the facts or has been informed of them and believes them to be true.

E. "Conservator" is a person or entity appointed by the court to manage the property or financial affairs, or both, of an incapacitated adult.

F. "Department" means the aging and long-term services department.

G. "Division" means the adult protective services division of the aging and long-term services department.

H. "Guardian" is a person or entity who has qualified to provide for the care, custody, or control of an incapacitated adult pursuant to court appointment. Examples of a guardian's responsi-

bilities may include making decisions about where the incapacitated person lives, making health care or treatment decisions for the incapacitated adult, and making decisions relating to the incapacitated adult's personal safety or care.

I. "Guardianship or conservatorship" is the appointment, by a court, of a person or entity to assume decision making responsibility and to handle the affairs of an individual the court has found to be "incapacitated" as defined in the Probate Code. A guardian and conservator may be the same person or institution or they may be two different persons or entities.

J. An "incapacitated adult" is defined in the Adult Protective Services Act as any adult with a mental, physical or developmental condition that substantially impairs the adult's ability to provide adequately for the adult's own care or protection.

K. A "surrogate" is a person legally authorized to act on an adult's behalf.

L. A "visitor" is a court appointed person, who is not a department employee, with no personal interest in the proceedings who is trained or possesses the expertise to evaluate the person's needs in a guardianship or conservatorship case.
[8.11.5.7 NMAC - Rp, 8 NMAC 11.5.7, 10/30/08]

8.11.5.8 PURPOSE OF ADULT PROTECTIVE LEGAL SERVICES: The purpose of adult protective legal services is to protect incapacitated adults through legal intervention consistent with the adult's need for services and with the least possible restriction of the adult's liberty.

[8.11.5.8 NMAC - Rp, 8 NMAC 11.5.8, 10/30/08]

8.11.5.9 ROLE OF THE ADULT PROTECTIVE SERVICES ATTORNEY:

A. The adult protective services attorney provides information, interpretation of law and general assistance to the department in the provision of adult protective services.

B. When the adult protective services attorney, supervisor, and regional manager cannot agree on the most appropriate course of action to protect an incapacitated adult through legal intervention, the issues shall be resolved between the general counsel and adult protective services division director. If they cannot agree, the department's cabinet secretary is the final arbiter.

[8.11.5.9 NMAC - Rp, 8 NMAC 11.5.9, 10/30/08]

8.11.5.10 GENERAL PROVISIONS:

A. The department complies with the provisions of the Adult Protective Services (APS) Act and the Rules of Civil Procedures and the Rules of Evidence for the district courts.

B. Attorney-client relationship: The primary decision-maker on the case of an incapacitated adult is the caseworker for the purpose of the attorney-client relationship. If a conflict of opinion arises between the caseworker and his supervisor or a manager within the chain-of-command, the decision-maker becomes the highest ranking person making a determination in the matter up to and including the department's cabinet secretary.

C. Attorney-client privileged communications: Written and verbal communications concerning department business between an APS attorney and a department employee in anticipation of litigation or concerning on-going litigation is privileged. Privileged communication may not be disclosed to a third party without appropriate permission or by order of the court.

D. Confidentiality/access to records: Protective services division records are confidential and can only be inspected pursuant to a valid court order except by those entities specifically entitled to access under the Adult Protective Services Act.

(1) When allowing access to an authorized entity, all attorney-client privileged information and, where protected by law, all identifying information on the referral source on referrals is stricken.

(2) Unless approved by a department attorney, division records are not released pursuant to a subpoena because subpoenas do not reflect a court determination of legitimate interest in the case or the work of the court.

E. Notice requirements: The APS attorney is responsible for sending proceeding notifications to the appropriate persons.

F. Due process: APS attorneys are to provide procedural safeguards for all parties in all adult protective services legal cases filed by the department.

[8.11.5.10 NMAC - Rp, 8 NMAC 11.5.10, 10/30/08]

8.11.5.11 CIVIL OR CRIMINAL COURT: The department may cooperate with parties and courts in criminal and other civil proceedings pursuant to applicable law.

[8.11.5.11 NMAC - Rp, 8 NMAC 11.5.11, 10/30/08]

8.11.5.12 CASES ON TRIBAL LANDS: The department may not provide legal services on Indian tribal land unless allowed under federal law after written authorization is received from tribal leadership (tribal governor or president.)

[8.11.5.12 NMAC - Rp, 8 NMAC 11.5.12, 10/30/08]

8.11.5.13 EMERGENCY PROTECTIVE SERVICES OR PLACEMENT:

A. If an incapacitated adult is in an emergency situation and lacks the ability to consent to receive protective services and no other authorized person is available or willing to consent to protective services, the department may seek an emergency order from the district court for such services.

B. The department files an ex parte order based upon a petition and affidavit.

C. Within 24 hours, excluding weekends and legal holidays, from the time the ex parte order is issued or, if the ex-parte order authorizes forcible entry, from the time the ex-parte order is served upon the incapacitated adult, the department mails or delivers written notice, including a copy of the petition, the ex parte order, and the affidavit for the ex parte order, to:

- (1) the adult;
- (2) his or her spouse;
- (3) adult children or next of kin;
- (4) surrogate or guardian, if any;

and

(5) the notice informs all parties that a hearing will be held no later than ten days after the date the petition is filed to determine whether the conditions creating the emergency have been removed and whether the adult should be released from the court's order.

D. Limitations of an emergency ex parte order.

(1) The department cannot facilitate a change of residence or hospitalization unless the order requests it and identifies by name and location where the change of residence or hospitalization shall be.

(2) The adult loses no rights except those described in the emergency order.

(3) The court may authorize only those interventions which it finds to be least restrictive of the adult's liberty and civil rights, consistent with his or her welfare and safety.

(4) Neither the department nor its employees can be named as guardian or conservator for the adult, except when the department employee is related by blood or

marriage to the incapacitated adult.

E. If the department determines that conditions creating the need for emergency protective services or placement cannot or have not been resolved within the ten day period, renewal of the emergency order may be requested, or discussed at the ten day ex parte hearing.

(1) The department supports the request for renewal with a comprehensive physical, mental and social evaluation of the adult.

(2) The original order can be renewed by the court, once for a maximum period of twenty days.

(3) The adult can petition the court to set aside the emergency order at any time.

F. The adult is present at the hearing unless the court determines it is not possible or not in his best interest because of a threat to the adult's health and safety.

(1) The adult has the right to an attorney, whether or not he is present at the hearing. If the person is indigent, the court must appoint him an attorney no later than the date the petition is filed.

(2) The adult may secure an independent medical, psychological or psychiatric examination and present a report of the independent evaluation or the evaluator's testimony as evidence at the hearing.

[8.11.5.13 NMAC - Rp, 8 NMAC 11.5.13, 10/30/08]

8.11.5.14 CONTINUING NEED FOR PROTECTIVE SERVICES OR PLACEMENT:

A. If the adult continues to need protective services or placement after the renewal order expires, the department is responsible for seeking appointment of a guardian or conservator to assume responsibility for the adult's care or the department must petition for a non-emergency protective placement.

B. The department may file a petition for guardianship/conservatorship simultaneously with the application for renewal for continuity of services during the guardianship/conservatorship notice period of two weeks before the hearing on the merits can be held.

C. If a temporary guardian is appropriate, it may be possible to skip the renewal proceedings and immediately begin the guardianship.

[8.11.5.14 NMAC - Rp, 8 NMAC 11.5.14, 10/30/08]

8.11.5.15 EMERGENCY PLACEMENT BY A LAW ENFORCEMENT OFFICER:

A. The department may contact law enforcement to transport an incapacitated adult to an appropriate facility.

ty, without a court order, for an emergency placement.

(1) Law enforcement makes the determination that the emergency placement is required based upon law enforcement's personal observation and judgment in accordance with the Adult Protective Services Act.

(2) The department need not be present for the emergency removal to occur.

(3) The department is available upon request of law enforcement to accompany the officer to:

(a) help assess the adult's situation;

(b) assist in arranging suitable transporting; and

(c) help the officer locate and arrange an appropriate placement.

(4) Absent a court order allowing the caseworker to transport the adult, only a law enforcement officer is authorized to transport or delegate transport of an adult to an appropriate placement.

B. The APS attorney files a petition and affidavit in district court supporting the need for emergency placement within two working days following the emergency placement, and shall mail or deliver written notice to the person(s) specified in Subsection C of 8.11.5.13 NMAC, when the following conditions have been met:

(1) the department is informed of and concurs with the officer's decision to place the adult; and

(2) the department has determined the statutory requirements of the Adult Protective Services Act regarding emergency protective placements by law enforcement officer have been met.

C. A court hearing is held within ten days from the date the petition is filed to review the emergency removal and placement and to consider any department request for an extension or renewal of the original emergency order.

[8.11.5.15 NMAC - Rp, 8 NMAC 11.5.15, 10/30/08]

8.11.5.16 NON-EMERGENCY PROTECTIVE SERVICES/PLACEMENT:

A. The department may petition the court for a non-emergency protective services/placement of an adult. The court may issue a non-emergency protective services/placement order based upon a petition and supporting medical, psychological and social evaluations of the adult.

B. The APS attorney prepares the non-emergency protective services/placement petition based on information provided by the caseworker.

C. The department provides notice that a petition for non-emer-

gency protective services/placement has been filed as follows:

(1) the adult receives written notice, in person, that a petition for non-emergency protective services/placement has been filed;

(2) notice is given at least 14 days prior to the scheduled hearing date;

(3) the adult's attorney and anyone who has physical custody of the adult is given notice; notice is also given to the adult's legal counsel, caretaker, guardian, conservator, surrogate, spouse, adult children or next of kin if such can be located with reasonable diligence.

D. The department conducts or arranges for a comprehensive mental, psychological and social evaluation for the adult in a non-emergency petition.

E. Prior to the expiration of the non-emergency protective services/placement, the department reviews the need for continued protective services/placement, including the need for a guardian or conservator. The department submits a report and recommendations to all persons who were served notice of the original petition, as appropriate.

F. The department may petition the court for an extension of the protective services/placement order for a period not to exceed six months.

[8.11.5.16 NMAC - Rp, 8 NMAC 11.5.16, 10/30/08]

8.11.5.17 GUARDIAN - SHIP AND CONSERVATORSHIP:

A. The department explores other options such as representative payee, power of attorney, surrogate decision-makers, trusts and living wills, prior to initiating guardianship or conservatorship proceedings.

B. The department recommends limiting the powers of a guardianship or conservatorship to only those areas necessary to accommodate the adult's limitations.

C. The APS attorney completes the guardianship/conservatorship petition based on information provided by the department caseworker.

D. The department provides written notice that a petition has been filed. A copy of the petition and any interim order is served personally on the alleged incapacitated adult and given to all interested parties at least 14 days before the date the hearing is scheduled. Interested parties entitled to notice include:

(1) the alleged incapacitated adult;

(2) the adult's spouse, parents and adult children;

(3) if there are no spouse, parents or adult children, at least one of his closest

relatives;

(4) any person serving as the adult's guardian or conservator or who has primary responsibility for the person's care;

(5) any interested person who has filed a request for notice with the court; and

(6) any other person the court indicates.

E. Unless the adult has his own attorney, the court must appoint one to represent him.

F. The department recommends a qualified health care professional to examine the adult prior to the hearing.

G. The department provides the visitor a letter outlining the responsibilities of the visitor as per the Probate Code and the department and requests that the visitor sign a statement of confidentiality.

(1) The department caseworker negotiates a fee for the visitor not to exceed \$60.00 an hour with a limit of six hours per client to perform all the visitor's duties. A higher fee may be paid if approved by the APS attorney.

(2) The department reimburses the visitor's mileage at the DFA rate (see 2.42.2 NMAC).

(3) The visitor must submit an itemized statement for his services prior to payment.

H. Department employees cannot serve as visitors in cases filed by the APS attorney.

[8.11.5.17 NMAC - Rp, 8 NMAC 11.5.17, 10/30/08]

8.11.5.18 TEMPORARY GUARDIANSHIP/CONSERVATORSHIP:

A. In emergency situations the court may appoint a temporary guardian/conservator prior to a hearing on a petition.

B. The department may petition the court to appoint a temporary guardian/conservator.

C. The adult is served within 24 hours of the appointment of a temporary guardian/conservator.

D. If subsequently granted to the temporary guardian/conservator by the court, the authority of any previously court appointed permanent guardian or conservator is suspended.

[8.11.5.18 NMAC - Rp, 8 NMAC 11.5.18, 10/30/08]

8.11.5.19 TERMINATION /REMOVAL OF A GUARDIAN OR CONSERVATOR: The adult, his personal representative, the conservator or guardian or any other interested persons, including the department, can petition the court for removal of the guardian/conservator and

request the appointment of a successor, if in the adult's best interest. The court can remove a guardian or conservator, modify, or terminate a guardianship or conservatorship on the basis that the guardian/conservator:

- A. is incapacitated;
- B. has abused, neglected or exploited the adult;
- C. is unable or unwilling to carry out his statutory duties;
- D. continued function as guardian/conservator is not in the adult's best interest; or

E. the adult is no longer incapacitated and is capable of managing his person or finances and property.

[8.11.5.19 NMAC - Rp, 8 NMAC 11.5.19, 10/30/08]

8.11.5.20 EXPERT WITNESSES:

A. The caseworker gives the APS attorney advance notice of all witnesses, expert or otherwise, to be called to allow sufficient time to secure subpoenas and service.

B. The department reimburses for expert testimony, time and travel.

(1) The APS attorney approves the expert witness services before they are rendered.

(2) The department has payment guidelines that are followed except in areas of the state where lower rates may be negotiated. APS attorneys may approve higher rates under exceptional circumstances, budget permitting.

[8.11.5.20 NMAC - Rp, 8 NMAC 11.5.20, 10/30/08]

8.11.5.21 PENALTIES. The department may impose, after notice as described in Subsection A of 8.11.5.21 NMAC, civil penalties not to exceed \$10,000 against a facility, provider, or individual who fails to provide documents or certain identifying information, interferes with an investigation, interferes with the provision of voluntary or involuntary protective services, breaches confidentiality, or fails to report abuse, neglect, or exploitation of an incapacitated adult.

A. Upon determination by the adult protective services division that there has been a violation of the particular statutory section of the APS Act that allows for a particular penalty, the department may deliver to the facility, provider, or individual charged with the violation a notice of civil penalty assessment. The notice shall be delivered in person or by certified mail, return receipt requested. The notice shall include:

(1) the name and address of the person or entity to whom the penalty assessment is directed;

(2) the date of the civil penalty assessment;

(3) the basis for the civil penalty assessment;

(4) the amount of the civil penalty assessment;

(5) the date the civil penalty assessment is due for payment;

(6) notice of the right to request an administrative hearing before the department to challenge the civil penalty assessment; and

(7) a statement that the request for administrative hearing must be made in writing to the department's adult protective services division director within ten days of the notification.

B. Unless a hearing is requested, the civil penalty assessment shall be paid to the department in the form of cash, cashier's check, or money order.

C. If a hearing is requested, the department secretary or his designee shall appoint a neutral hearing officer who shall schedule an administrative hearing to determine if the violation occurred and whether a penalty should be assessed. If a penalty shall be assessed, the hearing officer shall determine the amount of the penalty based on the following factors:

(1) the severity of the violation;

(2) the harm resulting from the violation;

(3) the number of times the violation has occurred and whether civil penalties have been assessed previously;

(4) whether the violation is willful or intentional;

(5) whether the facility, provider, or individual charged with the violation was following organizational policy or orders;

(6) whether there was threatened retaliation against a provider or employee for trying to comply with the requirements of the statutory sections of the adult protective services act allowing for penalties.

D. If the hearing officer determines that a facility, provider, or individual has committed the same violation more than once, a minimum of \$1,000 per occurrence shall be assessed.

[8.11.5.21 NMAC - N, 10/30/08]

8.11.5.22 REPRESENTATION:

A. A person or entity may appear as a party on his or their own behalf or by an attorney licensed to practice law in New Mexico.

B. The department may be represented by a duly authorized employee of the department or by an attorney licensed to practice law in New Mexico.

C. An attorney for a party must file an entry of appearance at least ten (10) working days before the commencement of any hearing. The attorney of record for a party shall be deemed to continue to be

the attorney of record until written notice of withdrawal of representation is provided to the hearing officer and the parties.

[8.11.5.22 NMAC - N, 10/30/08]

8.11.5.23 REQUEST FOR HEARING:

An assessed party may request a hearing before the department. The request for hearing shall be in writing and received by the adult protective services division director no later than ten (10) working days from the date that the assessed party receives the civil penalty assessment. The request for hearing shall include:

A. the name and address of the assessed party;

B. a copy of the civil penalty assessment;

C. a brief statement of the factual or legal bases upon which the assessed party challenges the civil penalty assessment; and

D. a statement of the relief requested.

[8.11.5.23 NMAC - N, 10/30/08]

8.11.5.24 APPOINTMENT OF HEARING OFFICER:

Within five (5) working days of receipt of a timely request for hearing, the adult protective services division director shall appoint a hearing officer and shall send written notice of the appointment to the parties.

[8.11.5.24 NMAC - N, 10/30/08]

8.11.5.25 NOTICE OF HEARING AND TIME LIMITS FOR HOLDING HEARING:

A. Within ten (10) working days of appointment, the hearing officer shall establish the date, time and place of the hearing. The hearing shall be no more than one hundred twenty (120) calendar days from the date of the civil penalty assessment unless the parties agree otherwise.

B. The hearing officer shall issue a notice of hearing at least thirty (30) calendar days before the hearing date, unless the parties agree to a shorter time-frame. The notice shall be served on the parties by certified mail, return receipt requested. At the discretion of the hearing officer, the notice may be served by regular mail or other appropriate means on any other persons or entities that may have an interest in the proceedings.

C. The notice of hearing shall include:

(1) the name of the assessed party;

(2) the name and address of the adult protective services division director;

(3) the time, date, place, and nature of the hearing; and

(4) a statement of the legal

authority under which the hearing is to be held.

[8.11.5.25 NMAC - N, 10/30/08]

8.11.5.26 VENUE: Unless the parties agree otherwise, the hearing shall be held in the county where the events allegedly occurred that gave rise to the civil penalty assessment.

[8.11.5.26 NMAC - N, 10/30/08]

8.11.5.27 POWERS AND DUTIES OF THE HEARING OFFICER: The hearing officer shall have the authority to:

- A. preside over hearings;
- B. assure that hearings are properly recorded;
- C. administer oaths and affirmations to the witnesses;
- D. issue subpoenas and subpoenas *duces tecum*;
- E. establish procedural schedules;
- F. rule on motions and procedural requests;
- G. require parties to attend hearings, pre-hearing conferences and settlement conferences;
- H. require parties to produce for examination information or witnesses under their control;
- I. require parties to express their positions on any issues in the proceedings;
- J. require parties to submit legal briefs on any issues in the proceedings;
- K. examine witnesses, and permit parties to examine witnesses;
- L. determine the admissibility of evidence;
- M. take official notice of any matter that is among the traditional matters of official or administrative notice in accordance with the terms of this rule;
- N. recess any hearing from time to time;
- O. regulate the course of the proceedings and the conduct of any participants;
- P. take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses;
- Q. issue a recommended decision on the merits of a case, including findings of fact and conclusions of law;
- R. approve settlements or other pre-hearing or post-hearing dispositions of cases by the parties, subject to final approval by the secretary; and
- S. take any other action reasonably necessary to conclude the proceedings in a timely and fair manner.

[8.11.5.27 NMAC - N, 10/30/08]

8.11.5.28 APPLICABILITY OF RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE: Although formal rules of civil procedure and evidence do not apply, the hearing officer may look to the New Mexico rules of civil procedure and the New Mexico rules of evidence for guidance during the course of the proceedings. In addition, the hearing officer's recommended decision and the secretary's final decision must be supported by a residuum of legally competent evidence as would support a verdict in a court of law.

[8.11.5.28 NMAC - N, 10/30/08]

8.11.5.29 COMMUNICATIONS WITH DEPARTMENT AND HEARING OFFICER:

A. No party, representative of a party, or other person shall communicate off the record about the merits of a case with the department or the hearing officer unless the communication is in writing and a copy is provided to all parties to the proceedings.

B. The department's employees and the hearing officer shall not communicate off the record about the merits of a case with any party, representative of a party, or other person unless the communication is in writing and a copy is sent to all parties to the proceedings.

[8.11.5.29 NMAC - N, 10/30/08]

8.11.5.30 PRE-HEARING DISCLOSURES AND DISCOVERY:

A. Upon written request of any party, the hearing officer may require parties to comply with reasonable discovery requests. Oral and written depositions are prohibited except to preserve the testimony of persons who are sick or elderly, or persons who shall not be able to attend the hearing.

B. At least fifteen (15) calendar days before the hearing, each party shall file the following information with the hearing officer and send copies to the other parties:

(1) the name of each witness that the party shall or may call at the hearing;

(2) a summary of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the bases for those opinions;

(3) an estimate of the length of time for the direct testimony of each witness; and

(4) a list of exhibits that shall or may be offered into evidence at the hearing; in addition, each party shall provide the other parties, but not the hearing officer, with copies of all exhibits that are identified on the exhibit list but have not been provided previously.

C. Parties are encouraged to enter into stipulations of fact to expedite the hearing process. Any stipulations must be filed jointly with the hearing officer at least ten (10) working days before the hearing.

[8.11.5.30 NMAC - N, 10/30/08]

8.11.5.31 SUBPOENAS:

A. Pursuant to Section 28-17-19(C) NMSA 1978, upon the written request of a party, the hearing officer may issue subpoenas to compel attendance of witnesses or production of records in connection with proceedings before the department.

B. In order to subpoena a person who is not a party to the proceedings, or an agent or representative of a party, the party requesting the subpoena shall tender witness fees and mileage to the person subpoenaed in accordance with the terms of Rule 1-045 NMRA.

C. The hearing officer may condition a subpoena to permit the inspection and copying of records upon the party requesting the subpoena paying the person subpoenaed the reasonable cost of inspection and copying in advance.

[8.11.5.31 NMAC - N, 10/30/08]

8.11.5.32 EVIDENCE AND CONDUCT OF HEARING:

A. Hearings shall be conducted as follows:

(1) all hearings shall be open to the public, unless closing a hearing is necessary to protect the privacy of any person who is entitled to privacy protection under federal or state law;

(2) only relevant and material evidence is admissible at hearings; evidence shall be allowed if it is of a type commonly relied upon by reasonably prudent persons in the conduct of serious affairs;

(3) redundant evidence shall be excluded;

(4) witnesses shall be examined orally, under oath or affirmation; the parties and the hearing officer shall have the right to cross-examine witnesses; and

(5) the hearing officer may take official notice of any matter that is among the traditional matters of official or administrative notice, and may take official notice of any matter that is within the department's specialized knowledge; the hearing officer shall inform the parties of any matters officially noticed, and shall afford the parties an opportunity to contest any such matters.

B. The burden of persuasion at the hearing shall be on the adult protective services division, which must prove its case by a preponderance of the evidence unless the case involves allegations of fraud.

C. At the hearing, the adult protective services division shall present its evidence first. If the assessed party wishes to present evidence, it shall proceed second. Thereafter, only the adult protective services division may present rebuttal evidence. Rebuttal evidence shall be confined to the issues raised in the assessed party's presentation of evidence. Each party shall be given an opportunity to offer a final oral or written argument without additional presentation of evidence.

[8.11.5.32 NMAC - N, 10/30/08]

8.11.5.33 RECORD OF HEARING:

A. Unless a hearing is stenographically recorded and the hearing officer orders otherwise, all hearings shall be recorded electronically by audio or audio-video. Any party desiring a copy of the audio or audio-video shall make a written request to the hearing officer and shall pay the cost of preparing a copy.

B. No later than five working days before a hearing, a party may request that the hearing be stenographically recorded at the cost of the requesting party. The request shall be in writing to the hearing officer and shall certify that the party has hired a certified court reporter and made all necessary arrangements for the court reporter to perform his or her job. In addition, the requesting party shall arrange for the court reporter to deliver two copies of the completed hearing transcript to the hearing officer. A court reporter's transcription becomes official when certified by the hearing officer. The requesting party shall pay the court reporter's fees, including any costs associated with providing the copies of the completed hearing transcript to the hearing officer.

C. Record. The record in a hearing shall consist of the following:

- (1) the civil penalty assessment;
- (2) the assessed party's request for hearing;
- (3) the notice of appointment of the hearing officer;
- (4) the notice of hearing;
- (5) all pleadings and orders;
- (6) any written information requested by the hearing officer and provided to him or her by the parties before the hearing;
- (7) all exhibits;
- (8) all stipulations;
- (9) all statement of matters officially noticed by the hearing officer;
- (10) the electronic audio or audio-video recording, or the court reporter's written transcription of the hearing prepared in accordance with this rule;
- (11) the hearing officer's recommended decision;
- (12) any motions for reconsideration and rulings thereon; and

(13) the secretary's final decision.
[8.11.5.33 NMAC - N, 10/30/08]

8.11.5.34 HEARING OFFICER'S RECOMMENDED DECISION:

A. The hearing officer shall present a written recommended decision to the secretary after the close of the hearing, and shall send copies to the parties. The recommended decision shall be based solely on the record and shall include proposed findings of fact and conclusions of law.

B. Any motions for reconsideration shall be submitted to the hearing officer within five working days from the date of service of the hearing officer's recommended decision. Such motions shall be decided without a hearing unless the hearing officer orders otherwise.

[8.11.5.34 NMAC - N, 10/30/08]

8.11.5.35 SECRETARY'S FINAL DECISION:

A. The secretary shall issue a final written decision within 10 working days of the receipt of the hearing officer's recommended decision or ruling on a motion for reconsideration. Based upon the evidence in the record, the secretary may affirm, reverse or modify the hearing officer's recommended decision as modified by any subsequent rulings of the hearing officer. The secretary's final decision shall inform the parties of their right to seek judicial review.

B. The secretary shall send copies of the final decision to the parties by certified mail, return receipt requested.

C. When the secretary's final decision affirms a civil penalty assessment by the adult protective services division, the assessed party shall pay the civil penalty to the department within thirty (30) calendar days from the date of the decision. Payment shall be in the form of cash, cashier's check or money order.
[8.11.5.35 NMAC - N, 10/30/08]

8.11.5.36 APPEAL: A person who is aggrieved by the secretary's final decision may appeal to the district court in accordance with the provisions of Section 39-3-1.1 NMSA 1978 and Rule 1-074 NMRA. The date of filing of the secretary's final decision starts the time limit for appeal.
[8.11.5.36 NMAC - N, 10/30/08]

8.11.5.37 NO AUTOMATIC STAY PENDING JUDICIAL REVIEW: The filing of a notice of appeal shall not stay the enforcement of the secretary's final decision. Upon a showing of substantial hardship and irreparable harm, the secretary may grant a stay of the final

decision pending appeal. The district court may also grant a stay in accordance with the provisions of Rule 1-074 NMRA.
[8.11.5.37 NMAC - N, 10/30/08]

8.11.5.38 ENFORCEMENT OF ORDERS AND PAYMENT IN DEFAULT:

Whenever an assessed party is in default of a civil penalty assessment, the adult protective services division may file an action in district court solely for the purpose of entry of judgment and enforcement of the civil penalty. The district court shall accept the civil penalty assessment without reviewing the basis for it and shall enter an appropriate judgment or order to enforce the civil penalty assessment.

[8.11.5.38 NMAC - N, 10/30/08]

HISTORY OF 8.11.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 8/22/86.
SSD 10.0.0, Social Services - Definition and Goal Statement, filed 6/18/87.
SSD 10.0.0, Social Services - Definition and Goal Statement, filed 9/18/90.
SSD 10.1.0, Social Services for Adults - General Provisions, filed 8/22/86.
SSD 10.1.0, Social Services for Adults - General Provisions, filed 1/29/87.
SSD 10.1.0, Social Services for Adults - General Provisions, filed 6/18/87.
SSD 10.1.0, Social Services for Adults - General Provisions, filed 9/18/90.
SSD 10.2.0, Social Services for Adults - General Guidelines, filed 8/22/86.
SSD 10.2.0, Social Services for Adults - General Guidelines, filed 9/18/90.

History of Repealed Material: 8 NMAC 11.5, Adult Protective Services-Adult Protective Services Legal (filed 6/16/1997) repealed 10/30/08.

Other History:

SSD 10.0.0, Social Services - Definition and Goal Statement (filed 9/18/90); SSD 10.1.0, Social Services for Adults - General Provisions (filed 9/18/90); and SSD 10.2.0, Social Services for Adults - General Guidelines (filed 9/18/90) were renumbered, reformatted, and replaced by 8 NMAC 11.5, Adult Protective Services-Adult Protective Services Legal, effective 07/01/1997.

8 NMAC 11.5, Adult Protective Services - Adult Protective Services Legal (filed 06/16/1997) was replaced by 8.11.5 NMAC, Adult Protective Services Legal, effective 10/30/08.

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

This is an amendment to 21.17.47 NMAC, Section 8, effective 10/30/2008.

21.17.47.8 ASSESSMENT:

A. The committee assessment rate is set forth at [~~5 dollars (\$5)~~] 2 dollars (\$2) per bale of cotton for all cotton producers in the control district. The assessment will be collected at the cotton gins.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee.

C. Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days.

[21.17.47.8 NMAC - N, 06/15/2000; A, 08/31/2006; A, 09/28/2007; A, 10/30/2008]

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

8.10.6 NMAC, In-Home Services, filed November 1, 2005 is repealed and replaced by 8.10.6 NMAC, In-Home Services, effective October 30, 2008.

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 10 CHILD PROTECTIVE SERVICES
PART 6 IN-HOME SERVICES**

8.10.6.1 ISSUING AGENCY: Children, Youth and Families Department, Protective Services (PS).

[8.10.6.1 NMAC - Rp, 8.10.6.1 NMAC, 10/30/08]

8.10.6.2 SCOPE: Protective services employees and the general public.
[8.10.6.2 NMAC - Rp, 8.10.6.2 NMAC,

10/30/08]

8.10.6.3 STATUTORY AUTHORITY: New Mexico Children's Code, Section 32A-1-1, NMSA 1978
[8.10.6.3 NMAC - Rp, 8.10.6.3 NMAC, 10/30/08]

8.10.6.4 DURATION: Permanent
[8.10.6.4 NMAC - Rp, 8.10.6.4 NMAC, 10/30/08]

8.10.6.5 EFFECTIVE DATE: October 30, 2008 unless a later date is cited at the end of a section.

[8.10.6.5 NMAC - Rp, 8.10.6.5 NMAC, 10/30/08]

8.10.6.6 OBJECTIVE: To establish guidelines for the provision of in-home services to families at high or moderate risk, or with a child under the age of three, to reduce risk of maltreatment and to promote the continued safety of children.
[8.10.6.6 NMAC - Rp, 8.10.6.6 NMAC, 10/30/08]

8.10.6.7 DEFINITIONS:

A. "Case management" is a service provided to the clients that includes, but is not limited to, assessment of needs, reports, monitoring of progress, coordination of services, facilitation of inter-agency collaboration and documentation of efforts to meet the client's needs.

B. "Child maltreatment" is neglect, abuse, or perpetration of sexual activity that adversely affects a child or youth.

C. "Client" is each individual in a family receiving service from PS as an open and active case in FACTS.

D. "Community resources" are agencies, contractors, individuals, and community organizers that deliver services or other support for clients during and after PS involvement.

E. "Conditionally safe" is the term used to describe protective services' assessment based upon available information that when community resources have been put in place to protect the child, factors detrimental to the child have been temporarily mitigated, or the child's immediate circumstance or environment is not threatening to the child's safety.

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

G. "Direct service" is a service provided by PS staff to an individual or family that supports one or more goals in the family plan.

H. "Emergency discretionary funds (EDF)" are funds used to

secure services or items necessary to achieve goals of the family plan.

I. "Engagement" refers to the family's commitment to the PS intervention and subsequent involvement of the family with PS and community resources throughout the case.

J. "FACTS" is the family automated client tracking system, CYFD's management information system.

K. "Family assessment" is a collaborative process involving each household member and other relevant persons to identify and document the family's strengths, needs, and issues to be addressed in the family plan.

L. "Family centered meeting" is a facilitated meeting where PS workers and supervisors meet with parents or caregivers and others for the purpose of case planning and decision making.

M. "Family plan" is a plan developed by PS in collaboration with each household member, based on the information collected through the family assessment, which identifies the specific changes in behaviors and circumstances that are expected as a result of the in-home services intervention.

N. "In-home services" are services provided without court intervention that are expected to enhance the family's ability to function independently of PS, improve safety for children, create stability within the home, and develop healthy and supportive on-going community relationships.

O. "New Mexico Children's Code" refers to Section 32A-1-1, et. seq., NMSA 1978.

P. "PS" refers to the protective services division of the children, youth and families department, and is the state's designated child welfare agency.

Q. "Risk" is the term used to describe PS's assessment, based on established criteria, of the likelihood that child will be abused or neglected by his or her parents or legal guardian.

R. "Safe" is the term used to describe PS's assessment based upon predetermined factors that a child's immediate circumstances or environment is free from persons and situations that have been identified as possible cause of harm to the child.

S. "Safety plan" is a written document that outlines the steps a family or individual will take to ensure safety of themselves or others in their care that is mutually agreed upon by the family members and PS and may include community resources.

T. "Substitute care" is the placement of a child outside of the child's home made by PS pursuant to emergency custody, custody order, or a voluntary

placement agreement.

U. “Structured decision making (SDM) instruments” are instruments used to determine the safety and risk of maltreatment of children and the needs and strengths of the family, based upon the application of pre-determined criteria.

V. “Voluntary service intake (VSI)” is the category under which an in-home services case is opened in FACTS.

[8.10.6.7 NMAC - Rp, 8.10.6.7 NMAC, 10/30/08]

8.10.6.8 PURPOSE OF IN-HOME SERVICES: The purpose of in-home services is to promote the safety of children and reduce the risk of the recurrence of maltreatment of children by their caretakers without the intervention of the courts.

[8.10.6.8 NMAC - Rp, 8.10.6.8 NMAC, 10/30/08]

8.10.6.9 ELIGIBILITY:

A. A family is eligible to receive in-home services without regard to income.

B. A family is eligible to receive in-home services when there is a current substantiated allegation of abuse or neglect with scores of high to moderate on the risk assessment and the family needs and strengths assessment, or there is a current substantiated allegation of abuse or neglect with low risk and needs scores when the family includes a child of three years of age or younger. A family with unsubstantiated abuse or neglect may be eligible for in-home services with county office manager approval. In order to be eligible for in-home services, the child must be determined to be safe or conditionally safe. A child may not be determined to be safe or conditionally safe solely on the basis of the provision of in-home services.

C. A family whose child is in the legal custody of PS through a court order is not eligible to receive in-home services.

[8.10.6.9 NMAC - Rp, 8.10.6.9 NMAC, 10/30/08]

8.10.6.10 CASE TRANSFER TO IN-HOME SERVICES:

A. In-home services are assigned within five working days of the disposition of the investigation.

B. The investigation is closed within five days of case transfer to an in-home services worker.

[8.10.6.10 NMAC - Rp, 8.10.6.11 NMAC, 10/30/08]

8.10.6.11 PROVISION OF SERVICES:

A. No waiting list is estab-

lished or maintained for in-home services.

B. Families participate in in-home services without court intervention.

C. Services are provided to the family based on assessment of safety, risk, and the family's needs and strengths. Services provided to the family utilize family strengths, family resources, community resources, and PS resources.

D. PS favors the use of family and community services over direct services whenever possible and appropriate.

E. In-home services are delivered as a collaborative effort between PS, the family, and community partners.

[8.10.6.11 NMAC - Rp, 8.10.6.10 NMAC, 10/30/08]

8.10.6.12 FAMILY CONTACT:

A. The in-home services worker schedules the initial face-to-face contact with the family within seventy-two hours from transfer of the case to in-home services.

B. The in-home services worker shall meet with the family at least weekly through the duration of the case.

C. When determining the meeting frequency and other types of intervention, safety of the child is always the first consideration.

[8.10.6.12 NMAC - Rp, 8.10.6.17 NMAC, 10/30/08]

8.10.6.13 IN-HOME FAMILY ASSESSMENT AND SERVICE PLANS:

A. The PS worker, in collaboration with the family, completes a family assessment and develops a safety plan and family plan.

B. The PS worker, in collaboration with the family, reviews and updates the family's safety plan, addressing all individuals in the family.

C. The PS worker completes a family assessment and family plan for all in-home services cases.

[8.10.6.13 NMAC - Rp, 8.10.6.12 NMAC, 10/30/08]

8.10.6.14 CASE STAFFING AND ON-GOING ASSESSMENT: PS utilizes staffings and conferences to develop, assess, or review plans and to review services and the safety of a child.

[8.10.6.14 NMAC - Rp, 8.10.6.16 NMAC, 10/30/08]

8.10.6.15 EMERGENCY DISCRETIONARY FUNDS (EDF): PS may use EDF to assist the family with the goals identified in the family plan to reduce safety and risk factors for children in the home. EDF, when related to safety and risk, can be used to purchase products or services such as rent or rent deposits, utilities, clothing,

transportation, food, home or car repair, and appliance repair. EDF are dispersed according to the emergency discretionary fund manual.

[8.10.6.15 NMAC - Rp, 8.10.6.18 NMAC, 10/30/08]

8.10.6.16 SUBSEQUENT REPORTS OF ABUSE OR NEGLECT:

If a report is made to statewide central intake when there is reason to believe abuse or neglect has occurred subsequent to the original report that resulted in providing in-home services, then a new investigation will occur. A new investigation does not disqualify a family from receiving in-home services. PS may continue to provide in-home services during and after an investigation resulting from additional child abuse or neglect allegations if the safety of a child can be insured.

[8.10.6.16 NMAC - Rp, 8.10.6.19 NMAC, 10/30/08]

8.10.6.17 FAMILY REFUSAL OF IN-HOME SERVICES: A decision by the family to refuse or withdraw from services does not constitute abuse or neglect.

A. When the family refuses in-home services, the worker, in consultation with the supervisor, reviews the results of the safety assessment, risk assessment, and the family needs and strengths assessment instruments as well as other pertinent information to determine if PS should pursue involuntary service through a court order.

B. When the family withdraws after beginning in-home services, the worker conducts a safety assessment and a risk assessment and reviews the results, along with information from the investigation, as well as other pertinent information, to determine an appropriate course of action. Action may include, but is not limited to:

(1) revision of the in-home services family plan;

(2) case closure; or

(3) pursuit of involuntary services through a court order.

[8.10.6.17 NMAC - Rp, 8.10.6.20 NMAC, 10/30/08]

8.10.6.18 DURATION OF SERVICE DELIVERY:

In-home services case interventions are provided for a maximum of 180 days, unless the in-home services worker requests the county office manager grant a 45 day extension. The in-home services worker documents that an extension of services would assist the family in achievement of goals, reduce the risk of recurrent abuse or neglect, and ensure the child is safe or conditionally safe. No more than three forty-five day extensions will be granted.

[8.10.6.18 NMAC - Rp, 8.10.6.14 NMAC,

10/30/08]

8.10.6.19 CASE CLOSURE: In-home services cases may be closed with no further intervention from PS when the structured decision making instruments are completed and:

A. the safety assessment instrument documents that the child is safe or conditionally safe;

B. the safety assessment and risk assessment instruments document either no escalation of risk, or a decrease in the risk level;

C. the goals of the family plan have been achieved; or

D. the family withdraws from services pursuant to PR 8.10.6.17, Family Refusal of In-Home Services. [8.10.6.19 NMAC - Rp, 8.10.6.21 NMAC, 10/30/08]

8.10.6.20 CASE DOCUMENTATION: Case plans, case contracts, and supervisory consultations are documented in FACTS. [8.10.6.20 NMAC - Rp, 8.10.6.13 NMAC, 10/30/08]

HISTORY OF 8.10.6 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

8 NMAC 10.6, Family Preservation Services, filed 6/16/97 - Repealed 11/15/05. 8.10.6 NMAC, In-Home Services, filed 11/1/2005 - Repealed 10/30/08.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to Sections 7 and 8 of 8.139.100 NMAC, effective October 15, 2008.

8.139.100.7 DEFINITIONS:

A. Definitions A-L:

(1) Adequate notice: means a written notice that includes a statement of the action HSD has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits liability of the household for any overissuances received if hearing decision is adverse to the household. An adequate notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing date of the notice to request that benefits be restored to their previous level pending the outcome of an administrative hearing.

(2) Adjusted net income: means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical expenses are allowed for certain eligible members as a deduction from their gross income). 30 percent of this amount subtracted from the MFSA for the household's size is its benefit amount.

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

(4) Annual reporting: means a reporting requirement that allows a 24-month certification period and requires a household to submit a report in the twelfth month of the certification period. During the certification period, a household on annual reporting is only required to report when the household's income reaches or exceeds 130 percent of the federal poverty guideline for the size of the household.

(4) (5) Attendant: means an individual needed in the home for medical, housekeeping, or child care reasons.

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

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

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

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

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

(10) (11) Budget month: means the calendar month for which income and other circumstances of the household

are determined in order to calculate the food stamp benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

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

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

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

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

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

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

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

apartment building occupied primarily by elderly persons, or any public or private nonprofit school (tax exempt) which prepares and serves meals for elderly persons.

[(48)] (19) Date of admission: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

[(49)] (20) Date of entry: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

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

[(21)] (22) Disabled member: see elderly/disabled member.

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

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

[(24)] (25) Elderly or disabled member:

(a) Elderly: means an individual 60 years or older.

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

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

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

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

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

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

(vi) is a veteran consid-

ered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States code;

(vii) is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently homebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States code;

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

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

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

[(25)] (26) Eligible foods: means:

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

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

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

stamp benefits for communal dining;

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

(e) meals prepared and served by a group living arrangement facility to residents who are blind or disabled as found in the definition of "elderly or disabled member" contained in this section;

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

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

[(26)] (27) Encumbrance: means debt owed on property.

[(27)] (28) Equity value: means the fair market value of property, less any encumbrances owed on the property.

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

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

[(30)] (31) Expungement: means the permanent deletion of food stamp benefits from an EBT account that is stale.

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

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

[(33)] (34) Financial assistance (FA) households: (also referred to as cash assistance) means households composed entirely of persons who receive FA payments. Financial assistance (FA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to

needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds, made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. FA households composed entirely of TANF, GA ~~and/or~~ or SSI recipients are categorically eligible for FS.

[34] (35) FNS: means the food and nutrition service of the United States department of agriculture (USDA).

[35] (36) Food Stamp Act: ~~the Food Stamp Act of 1977 (P.L. 95-113)] the Food and Nutrition Act of 2008~~, and subsequent amendments.

[36] (37) Fraud: the elements of fraud are:

(a) intentionally taking anything of value;

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

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

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

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

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

[38] (39) General assistance (GA) households: means a household in which all members receive cash assistance

financed by state or local funds.

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

[40] (41) Group living arrangements: means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under section 1616(e) of the Social Security Act, or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of "elderly or disabled member" set forth at (i) through (x) of Subparagraph (b) of Paragraph ~~(24)]~~ **(25)** of Subsection A of 8.139.100.7 NMAC.

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

[42] (43) Homeless individual: means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

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

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

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

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

[43] (44) Homeless meal provider: means a public or private non-profit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

[44] (45) Immigrant: means a lawfully admitted alien who entered the

U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

[45] (46) Immigration and naturalization service (INS): a division of the U.S. department of justice.

[46] (47) Ineligible alien: means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

[47] (48) Income: means all monies received by the household from any source, excluding only the items specified by law or regulation. Income is also defined as any monetary gain or benefit to the household.

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

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

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

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

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

[53] (54) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of

another that cannot be revoked.

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

[55] (56) Low-income household: means a household whose annual income does not exceed 125 percent of the office of management and budget poverty guideline.

B. Definitions M-Z:

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

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

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

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

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

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

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

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

(9) Nonhousehold members: persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are excluded. Nonhousehold members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

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

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

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

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

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

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

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

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

[47] (16) Real property: means land, buildings, and whatever is built on or affixed to the land.

~~**(17) Recipient:** means a person receiving food stamp benefits. (same as a participant.)~~

~~**(18) Refugee:** means a lawfully admitted individual granted conditional entry into the U.S.~~

~~**(19) Reasonable compensation:** means a boarder payment, in cash, equivalent to the MFSA for the number of boarders.~~

~~**(20) Regular reporting:** means a reporting requirement in which a household is not required to meet semiannual reporting requirements, and must report a change within ten days of the date the change becomes known to the household.~~

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

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

~~**(21) Retail food store:** means:~~

(a) an establishment or recognized department of an establishment, or a

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

(b) public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts ~~and/or~~ or alcoholics;

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

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

~~(23)~~ **(22) Retrospective budgeting:** means the computation of a household's benefits for an issuance month based on actual income and circumstances that existed in the previous month, the "budget" month.

~~(24)~~ **(23) Self-employed:** an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. The individual is not eligible to draw UCB by virtue of their job efforts.

~~(25)~~ **(24) Semiannual reporting:** means a reporting requirement that allows a 12-month certification period and requires a household to submit a report in the sixth month of the certification period. During the certification period, a household on semiannual reporting is only required to report when the household's income reaches or exceeds 130 percent of the federal poverty guideline for the size of the household.

(25) Simplified reporting: means an alternative change reporting requirement for households that receive food stamp benefits.

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

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

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

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

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

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

(30) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

(31) Standard utility allowance (SUA): means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity (apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

(32) State wage information collection agency: the wage information collection agency for the state of New Mexico is the department of labor (DOL), employment security division (ESD) which administers the state employment compensation law and which provides a quarterly report of employment related income and eligibility data.

(33) Striker: means anyone involved in a strike or concerted work stoppage by employees (including stoppage due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

(34) Student: means an individual attending school at least half time, as defined by the institution; any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

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

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

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

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

(36) SSI household: means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for food stamps

through a social security office. The application must be forwarded to the appropriate food stamp (ISD) office for processing. SSI households are categorically eligible.

(37) Supplementary unemployment benefits (SUB): part of the guaranteed annual wage provisions in the auto industry whereby the company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

(38) Thrifty food plan (TFP): see maximum food stamp allotment.

(39) Transitional housing: housing is transitional if its purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of housing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

(40) Vehicles: means a mode of transportation for the conveyance of passengers to or from employment, daily living, or for the transportation of goods. For purposes of the food stamp program boats, trailers, and mobile homes shall not be considered as vehicles.

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

[8.139.100.7 NMAC - Rn, 8.139.650.7 NMAC & A, 02/14/2002; A, 01/01/2004; A, 02/28/2007; A/E, 10/15/2008]

8.139.100.8 ABBREVIATIONS & ACRONYMS:

A. Abbreviations and acronyms:

(1) ABAWD: able bodied adults without dependents

(2) AFDC: aid to families with dependent children (replaced by TANF effective July 1, 1997)

(3) AR: annual reporting

~~(3)~~ **(4) BIA-GA:** bureau of Indian affairs-general assistance

~~(4)~~ **(5) CA:** cash assistance (same as financial assistance)

~~(5)~~ **(6) CE:** categorical eligibility or categorically eligible

~~(6)~~ **(7) CFR:** code of federal regulations

~~(7)~~ **(8) CPI-U:** consumer price index for urban consumers

~~(8)~~ **(9) CS:** child support

~~(9)~~ **(10) CSED:** (HSD) child support enforcement division

~~(10)~~ **(11) CYFD:** (New Mexico) children youth & families department

[~~(44)~~] (**12**) **DOH**: (New Mexico) department of health
 [~~(42)~~] (**13**) **DOJ**: (United States) department of justice
 [~~(43)~~] (**14**) **DOL**: (New Mexico) department of labor
 [~~(44)~~] (**15**) **DOT**: dictionary of occupational titles
 [~~(45)~~] (**16**) **DRIPS**: disqualified recipient information processing system
 [~~(46)~~] (**17**) **E&T**: employment and training
 [~~(47)~~] (**18**) **EBT**: electronic benefit transfer
 [~~(48)~~] (**19**) **EC**: employment counselor
 [~~(49)~~] (**20**) **EI**: earned income
 [~~(20)~~] (**21**) **EW**: eligibility worker (now FAA or caseworker)
 [~~(24)~~] (**22**) **FA**: financial assistance (same as cash assistance)
 [~~(22)~~] (**23**) **FAA**: family assistance analyst (caseworker)
 [~~(23)~~] (**24**) **FCS**: food and consumer services of the USDA, now FNS
 [~~(24)~~] (**25**) **FFY**: federal fiscal year
 [~~(25)~~] (**26**) **FMV**: fair market value
 [~~(26)~~] (**27**) **FNS**: food and nutrition service
 [~~(27)~~] (**28**) **FSP**: food stamp program
 [~~(28)~~] (**29**) **GA**: general assistance
 [~~(29)~~] (**30**) **GED**: general equivalency degree
 [~~(30)~~] (**31**) **HHS**: (U.S.) health and human services
 [~~(34)~~] (**32**) **HSD**: (New Mexico) human services department
 [~~(32)~~] (**33**) **HUD**: (U.S.) housing and urban development
 [~~(33)~~] (**34**) **IEVS**: income and eligibility verification system
 [~~(34)~~] (**35**) **INS**: (U.S.) immigration and naturalization service
 [~~(35)~~] (**36**) **IPV**: intentional program violation
 [~~(36)~~] (**37**) **ISD**: (HSD) income support division
 [~~(37)~~] (**38**) **ISD2**: integrated services delivery for ISD
 [~~(38)~~] (**39**) **ISS**: income support specialist (now FAA or caseworker)
 [~~(39)~~] (**40**) **JOBS**: jobs opportunities and basic skills (a work program under AFDC)
 [~~(40)~~] (**41**) **JTPA**: Job Training Partnership Act (now WIA)
 [~~(44)~~] (**42**) **LIHEAP**: low income home energy assistance program
 [~~(42)~~] (**43**) **LITAP**: low income telephone assistance program
 [~~(43)~~] (**44**) **MFSA**: maximum food stamp allotment (benefit amount)
 [~~(44)~~] (**45**) **MRRB**: monthly

reporting and retrospective budgeting
 [~~(45)~~] (**46**) **MVD**: (New Mexico) motor vehicle division
 [~~(46)~~] (**47**) **NADA**: national automobile dealers association
 [~~(47)~~] (**48**) **NFA**: nonfinancial assistance (same as non-cash assistance (NCA))
 [~~(48)~~] (**49**) **NMW**: New Mexico works
 [~~(49)~~] (**50**) **QC**: quality control
 [~~(50)~~] ~~QR: quarterly reporting or quarterly reporters]~~
 (**51**) **RR**: regular reporting or regular reporters
 (**52**) **RSVP**: retired seniors volunteer program
 (**53**) **SAVE**: systematic alien verification for entitlements
 (**54**) **SNAP**: supplemental nutrition assistance program
 [~~(54)~~] (**55**) **SR**: semiannual reporting
 [~~(55)~~] (**56**) **SSA**: social security administration
 [~~(56)~~] (**57**) **SSI**: supplemental security income
 [~~(57)~~] (**58**) **SSN**: social security number
 [~~(58)~~] (**59**) **SUA**: standard utility allowance
 [~~(59)~~] (**60**) **SWICA**: state wage information collection agency
 [~~(60)~~] (**61**) **TANF**: temporary assistance to needy families (block grant program under Title IV-A of the Social Security Act)
 [~~(64)~~] (**62**) **TAPP**: tribal assistance project program (Navajo)
 [~~(62)~~] (**63**) **TFP**: thrifty food plan (now the maximum food stamp allotment)
 [~~(63)~~] (**64**) **UCB**: unemployment compensation benefits
 [~~(64)~~] (**65**) **USDA**: U. S. department of agriculture
 [~~(65)~~] (**66**) **VA**: veterans administration
 [~~(66)~~] (**67**) **WIA**: Workforce Investment Act (formally JTPA)

B. [Reserved]

[8.139.100.8 NMAC - Rn, 8.139.650.8 NMAC & A, 02/14/2002; A, 01/01/2004; A, 02/28/2007; A/E, 10/15/2008]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to Sections 8 through 17 of 8.139.120 NMAC, effective October 15, 2008.

8.139.120.8 RE CERTIFICATION: When a household's certification period expires, its eligibility to participate

in the food stamp program ends. Food stamp benefits will not be continued beyond the certification period. Timely applications for recertification will be approved or denied before the end of the current certification period.

A. Notice and time standards: Every household will be provided with a notice of expiration, as follows:

(1) For a household certified for one or two months, the notice of expiration will be provided at the time of certification.

(2) The household will have 15 days from the date the notice is received to submit a timely application for recertification. The household will be approved and provided an opportunity to participate, if eligible, or be denied, within 30 days after obtaining its last food stamp benefit amount.

(3) For all other households, a notice of expiration will be sent by HSD prior to the start of the last month of the household's certification period. A household has reapplied timely if the application for recertification is filed by the 15th of the last month of the household's certification period.

(4) The ~~[income support specialist (ISS)] caseworker~~ will complete the application process if the household meets all requirements and finishes the necessary processing steps; the ~~[ISS]~~ caseworker will approve or deny timely applications before the end of the household's current certification period.

B. Failure to submit timely application:

(1) A household that does not submit a timely application for recertification by the 15th of the expiration month loses its right to uninterrupted benefits.

(2) Food stamp benefits will be prorated from the date of application if a household's application is received in the month after its certification period has expired or participation has been terminated for any reason.

(3) The ISS will ensure that any eligible household that does not submit a timely application for recertification be provided the opportunity to participate, if eligible, within thirty (30) calendar days after the date the application is filed.

C. HSD failure to act: A household that has made a timely application for recertification, but because of agency error, is not determined eligible in sufficient time to provide for issuance by the household's normal issuance cycle in the following month, will receive an immediate opportunity to participate. A household will be entitled to restoration of lost benefits if, as a result of such error, it was unable to participate for the month following the expiration of the certification period, or benefits were prorated in the month after

expiration.

D. Scheduling interviews: An interview will be scheduled on the date or after a timely application for recertification is filed by a household. A household will not be required to appear for an interview, or to file an application for recertification, in the month before the last month of its current certification period. An interview may be scheduled in the month before the last month of certification, or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview. If an interview was scheduled, or if household member or authorized representative failed to attend an interview which was scheduled prior to the date a household files a timely application, the [ISS] caseworker will schedule an interview on or after the date an application is timely filed.

E. Failure to appear: If a household member or authorized representative fails to appear for a recertification interview scheduled on or after a timely application is filed, the household loses the right to uninterrupted participation. The [ISS] caseworker does not need to take any further action to schedule another interview, unless the household member or authorized representative requests another interview.

F. Prospective eligibility determination: A household's eligibility and food stamp benefit amount at recertification will be determined prospectively based on circumstances anticipated for the certification period, beginning with the month following the expiration of the current certification period.

G. Eligibility and benefits: Eligibility will be determined at recertification according to the standards described below.

(1) Timely reapplication: Applications filed before the 15th of the expiration month will be considered timely. A household member or authorized representative that attends an interview and provides all necessary verification by the end of the household's current certification period, will have the opportunity to participate by the household's normal issuance cycle in the month following the end of the current certification period, if all eligibility factors have been met.

(2) Reapplication after the 15th: If an application for recertification is submitted after the 15th but before the end of a household's certification period and the household is determined eligible for the first month following the end of the certification period, that month is not considered an initial month and benefits are not prorated.

(3) First month ineligibility: If an application for recertification is submitted before the end of a household's certi-

cation period, but the household is determined ineligible for the first month following the end of the certification period, the first month of any subsequent certification period will be considered an initial month and food stamp benefits will be prorated.

(4) Late applications:

(a) Recertification verification standards in Paragraph 2 of Subsection [H] I of 8.139.110.11 NMAC will be used when an application is received within thirty (30) days after the certification period expires. Initial month verification standards in [Paragraph 1 of] Subsection [H] I of 8.139.110.11 NMAC will be used if the application is received more than one calendar month after the certification period expires or the case has been closed for any reason.

(b) Initial month certification provisions and proration of benefits for migrant and seasonal farmworker households will apply when more than 30 days have passed since the household was certified for participation. (See 8.139.400.14 NMAC for more information on migrant and seasonal farmworker households).

(5) Pending verification: A household member or authorized representative that has reapplied timely, attended an interview, and is required to provide verification, or until the certification period expires, whichever is longer. If the certification period expires before the 10-day deadline for submitting the required verification, the household will have the opportunity to participate, if eligible, within five working days after verification is submitted. The household is entitled to a full month's benefits.

[02/01/95, 10/01/95, 01/01/97; 8.139.120.8 NMAC - Rn, 8 NMAC 3.FSP.122, 05/15/2001; A/E, 10/15/2008]

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 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. 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.

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.

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.
- F. 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.

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-employ-

ment income annualized shall be required to report changes in self-employment income on the semiannual report if the household has filed a tax return after its last approval or recertification of food stamps.

(c) A household assigned to semi-annual reporting whose self-employment income is not annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner:

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

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

(d) A household that fails to provide verification of an allowable deduction shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

(5) Use of conversion factors:

(a) Conversion factors shall be used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:

(i) the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and

(ii) biweekly amounts by 2.15.

(b) Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received.

(c) Instead, the amount of the extra paycheck is averaged over the certification period.

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

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.

(e) 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.

I. 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.

J. 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.

K. 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.

L. Reporting requirement for semiannual reporting households: A household assigned to semiannual reporting shall only be required to report when the household's income exceeds 120% 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.

M. 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 medicare 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.

N. 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.

O. 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.]

SIMPLIFIED REPORTING: Simplified reporting is an option in reporting requirements for households that receive food stamp benefits.

A. Household responsibilities at application:

(1) An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview.

(2) Changes occurring after the interview must be reported by the household subject to simplified reporting requirements contained in this section.

B. Households excluded from simplified reporting: The following household are excluded from simplified reporting, shall be certified for three months and are subject to the reporting requirements at 8.139.120.12 NMAC:

(1) 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 in which all members are homeless;

(c) a household in which all members are ABAWDs with no earned or unearned income and reside in a non-exempt and non-waived administrative area; and

(d) a household in which all members are migrant or seasonal farm workers.

(2) A household that is assigned to an alternative reporting requirement because of instability, shall be certified for no longer than three months.

C. Certification periods for households assigned to simplified reporting:

(1) A household with earned income:

(a) shall be assigned a 12-month certification period;

(b) shall be required to submit a report in the sixth month of the 12-month certification period; and

(c) shall remain subject to semi-annual reporting and requirements for the assigned certification period.

(2) The household's food stamp benefit amount will be adjusted in accordance with mass change requirements at 8.139.120.13 NMAC.

(3) A household in which all members are elderly or disabled as defined at 8.139.100.7 NMAC and are determined to be categorically eligible as defined at Subsection A of 8.139.420.8 NMAC:

(a) shall be assigned a 24 month certification period;

(b) cannot have any earned income; and

(c) must submit an annual report in the 12th month of the 24-month certification period.

(4) A household may report an increase in medical expenses for a household member eligible to claim a medical deduction. Food stamp benefits will be adjusted for the month following the month in which the change is reported only if the medical expense(s) is verified by the caseworker upon receipt of a report from the household.

(5) The household's food stamp benefit amount will be adjusted in accordance with the mass change requirements as set forth in 8.139.120.13 NMAC.

D. Applicant household: A household that is approved for food stamp benefits on or after October 1, 2008 shall be assigned a certification period in accordance with the household's circumstances as stated at Subsection C of 8.139.120.9 NMAC, retroactive to the month of application.

E. Participating household: A participating household not assigned to simplified reporting that is subsequently assigned to simplified reporting because of a reported change shall be transitioned at the end of the certification period in effect when the change occurred.

F. Reporting changes for simplified reporting households: A household assigned to simplified reporting must report, during its certification period, when the household's income reaches or exceeds the food stamp program monthly gross income limit 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.

[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; A/E, 10/15/2008]

8.139.120.10 REQUIREMENTS FOR SEMIANNUAL HOUSEHOLDS:

A. Household responsibilities at application: An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview. Changes occurring after the interview, but before the date of the approval notice, must be reported by the household within 10 days of the date the household receives its approval notice.

B. 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.

C. 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.

D. 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 semiannual 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 semiannual reporting whose self-employment income is not annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner.

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

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

(d) A household that fails to provide verification of an allowable deduction shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

(5) Use of conversion factors:

(a) Conversion factors shall be used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:

(i) the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and

(ii) biweekly amounts by 2.15.

(b) Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received.

(c) Instead, the amount of the extra paycheck is averaged over the certification period.

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

E. 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 house-

hold 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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 guide-

lines 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.

K. 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.

L. Action on cash assistance applications:

(1) A food stamp household assigned to semiannual reporting that is later approved for 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 cash 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, 07/01/98; 8.139.120.10 NMAC - Rn & A, 8.139.120.9 NMAC, 02/14/2002; A, 01/01/2004; A/E, 10/15/2008]

8.139.120.11 REQUIREMENTS FOR ANNUAL REPORTING HOUSEHOLDS:

A. Household responsibilities at application: An applicant must report all changes affecting eligibility and

food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview. Changes occurring after the interview must be reported by the household subject to the annual reporting requirements in this section.

B. Reporting requirements for annual reporting households:

A household subject to annual reporting shall be required to file an annual report no later than the tenth day of the twelfth month of the 24-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 half-time; and

(d) participation in or termination of work study.

(10) a change in immigrant

(alien) status for a household member.

C. Budgeting methodology for annual reporting at initial application and interim review:

(1) Prospective budgeting shall be used for an applicant household at initial application and at interim review 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 12 months of the certification.

(3) Recertification: At approval, eligibility and amount of payment shall be determined prospectively for each of the 12 months following the last month of the previous certification period.

D. Budgeting methodology for processing an annual report:

(1) Processing the annual report: Eligibility and food stamp benefit amount shall be determined prospectively for the 12 months following the month the annual report is due.

(2) Determining a household's eligibility and food stamp benefit amount:

(a) Income received weekly, bi-weekly, semi-monthly or 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.

(b) 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.

(c) If a determination is made that the use of the pay data for the budgeting methods described in (a) through (b), 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.

(d) 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.

(3) 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.

(4) 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.

E. Time limits for annual report received by the county office:

(1) The annual report form and all required verification provided shall be reviewed for completeness within ten days of receipt.

(a) A form that is complete and all required verifications are provided, shall be processed within ten days of receipt.

(b) A form that is complete, and all required 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 annual report is due shall be processed as part of the annual report.

(d) A deduction that is verified in the month after the annual 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 annual report is received:

(a) An annual report form that is not signed shall be returned to the house-

hold for a signature.

(b) An annual 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 annual report form by the end of the month in which the report is due in order to process the report for the following month.

F. A household that fails to submit an annual 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.

G. Information requirements for the annual report: The annual 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.

H. Disaster victims: A household participating in the food stamp program and subject to annual reporting shall be required to comply with annual reporting requirements during the disaster period. The household remains responsible for submitting the required information set forth in 8.139.120.11 NMAC, to the field office that handles its ongoing case.

I. Reporting requirement for annual reporting households: A household assigned to annual reporting shall only be required to report when the household's income exceeds 100% 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.

J. Action on changes reported between reporting periods for households assigned to annual 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) 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.

[02/01/95; 8.139.120.11 NMAC - Rn & A, 8.139.120.10 NMAC, 02/14/2002; 8.139.120.11 NMAC - N/E, 10/15/2008]

[8.139.120.10] 8.139.120.12 [CHANGE PROCESSING FOR REGULAR REPORTING HOUSEHOLDS] REQUIREMENTS FOR HOUSEHOLDS EXCLUDED FROM SIMPLIFIED REPORTING:

A. A regular reporting household includes all households not assigned to ~~[semiannual reporting]~~ simplified reporting. If ~~[during a certification period]~~ changes occur during a household's certification period, that affect eligibility or benefit amount, the caseworker shall take action to adjust the household's eligibility or food stamp benefit amount.

B. Household responsibilities:

(1) At application: An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview.

(2) Changes occurring after the interview, but before the date of the approval notice, must be reported by the household within 10 days of the date the household receives its approval notice.

[(2)] (3) [Change reporting requirements] Reporting during the certification period: A household must report changes within ten (10) days of the date a change becomes known to the household. No change reporting requirements may be imposed except as provided in (a) through (f) below. A household must report:

(a) earned income: a change in the source of earned income, including starting or stopping a job; or

(i) changing jobs if the change in employment results in a change in income;

(ii) a change in the amount of gross earned income received by a member of the household, if the amount changes by more than \$100 per month.

(b) unearned income:

(i) a change in the

source of unearned income;

(ii) a change of more than \$50 in the amount of unearned income except that changes in cost of living increases (COLAs), and mass changes in the social security and SSI benefits and changes in cash assistance amounts in programs administered by ISD including TANF, GA, EWP, and RRP do not have to be reported;

(c) changes in household composition, such as when an individual moves into or leaves the household;

(d) changes in residence and the resulting change in shelter costs;

(e) when cash on hand, stocks, bonds ~~and/or~~ or money in a bank account reach or exceed \$2,000, or \$3,000 for elderly/disabled households;

(f) changes in the legal obligation to pay child support, including termination of the obligation; a household with less than a 3-month record of child support payments shall be required to report changes greater than \$50.00 from the amount used in the most recent certification action.

[3] (4) Time limits:

(a) The 10-day period begins with the date the change becomes known to the household. For the purposes of reporting:

(i) a financial change shall be considered as timely if the change is reported no later than 10 days after the household receives the first payment or makes the first payment attributable to the change;

(ii) a non-financial change shall be considered timely if the change is reported no later than 10 days after it occurs.

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

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

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

C. HSD responsibilities:

The caseworker shall inform the household of its responsibility to report changes. The caseworker shall review any change reported by the household to determine if the change must be acted on and shall take the required action if the change affects eligibility or benefit amount. The caseworker shall document the date a change is reported, and whether the change affects eligibility or food stamp benefit amount.

(1) Action on changes for regular reporting households:

(a) When a household reports a

change, the caseworker shall take action to determine the household's eligibility ~~and/or~~ or food stamp benefit amount within ten days of the date the change is reported.

(b) For changes that result in a decrease or termination of household benefits, the caseworker shall act on the change as follows:

(i) If the caseworker receives a written report from the household that meets the standards of Subsection C of ~~[8.139.120.11]~~ 8.139.120.15 NMAC, action shall be taken for the following month without an advance notice of adverse action. The household shall be provided with adequate notice. If the certification period will expire before the expiration notice time limit, no action shall be required to reduce or terminate benefits.

(ii) If the change is reported by any other means, e.g., by phone, in person, etc., within ten days, the caseworker shall take action to issue a notice of adverse action (Subsection B of ~~[8.139.120.11]~~ 8.139.120.15 NMAC) to reduce or terminate benefits effective the month following the month the adverse action time limit expires. If the certification period will expire before the expiration of the adverse action time limit, no action shall be required to reduce or terminate benefits.

(c) During the certification period, the caseworker shall not act on changes in medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, requires the caseworker to contact the household for verification. The caseworker shall act only on those changes in medical expenses that are learned about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) Increased benefits:

(a) For changes resulting in an increase, other than changes described in (b) below, the caseworker shall make the change effective no later than the first benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date).

(b) For changes resulting in an increase in food stamp benefits because of the addition of a new household member who is not a member of another certified household or a decrease of \$50.00 or more in the household's gross monthly income, the caseworker shall make the change effective not later than the first food stamp benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date). In no event shall these changes take effect any later than the month following the month the change was reported.

ed. If the change is reported timely but the increase cannot be made effective the following month, the caseworker shall issue a supplement to the household in the following month.

(c) **Providing verification:** The household shall be allowed 10 days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If verification is not provided at the time a change is reported, the household shall be allowed 10 days, plus 3 days if a notice is mailed, to provide verification. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide required verification, its food stamp benefit amount shall revert to the original benefit amount.

(3) **Decreased benefits:** When a household timely reports a change which will decrease benefits, the caseworker shall issue an adverse action notice to the household (Subsection B of ~~[8.139.120.11]~~ 8.139.120.15 NMAC). If the adverse action time limit expires in the following month, there is no overissuance in the following month and the household is entitled to the greater benefit amount. The decrease shall be effective in the month following the month the notice expires.

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

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

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

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

D. Failure to report changes:

(1) If the caseworker discovers that the household failed to report a change as required, the caseworker shall evaluate the change to determine whether the household received benefits to which it was not

entitled. After verifying the change, the caseworker shall initiate a claim against the household for any month in which the household was overissued food stamp benefits. The first month of the overissuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Paragraph 2 of Subsection B of [8.139.120.10] 8.139.120.12 NMAC above.

(2) Increased benefit amount:

When a household fails to make a timely report of a change which will result in an increased food stamp benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 days after the date the change was reported.

[E.] E. Other changes:

(1) Eligibility standard: When a household becomes entitled to a different eligibility standard, the caseworker shall apply the new standard whenever there is a change in household eligibility, benefit amount, or certification period, whichever occurs first.

(2) Reconstituted household: If members in the household separate into two or more households, the individuals who left the original household shall not be eligible for separate status in the month the change occurs. An adverse action notice is required whenever members leave the household. If the adverse action time limit expires in the month the change occurs, the individuals in the reconstituted household may be certified in the month following the month the change occurs. If the notice of adverse action time limit expires in the month following the month the change occurred, the reconstituted household shall not be certified until the month following the month the notice time limit expires.

(3) Shortened certification period: Whenever a determination is made that a household's certification period must be shortened, the household is entitled to an expiration notice. A household shall be informed that its certification period shall end the month following the month the expiration notice is sent. The household shall be given an opportunity to timely reapply for benefits.

(4) Unreported changes: The caseworker shall act on all changes of which the caseworker becomes aware. At a

minimum, this means documenting changes in the case record. All discrepancies and questionable information shall be resolved to make sure that the correct food stamp benefit amount is issued to the household.

~~[(5) Noncompliance with program requirements or fraud:~~

~~(a) Intentional failure to comply or fraud:~~ No household shall receive an increase in food stamp benefits when its cash assistance payment is reduced for intentional failure to comply with the cash assistance program's eligibility requirements or for an act of fraud. A cash assistance program is defined as a means tested federal, state, or local welfare or public assistance program, governed by welfare or public assistance laws or regulations, which distributes public funds. Such programs include, but are not limited to, supplemental security income (SSI), TANF (Title IV A), and federal or state general assistance (BIA-GA and GA). Failure to comply shall be determined as provided in Paragraph 3 of Subsection I of 8.139.520.9 NMAC.

~~(b) Verification of recoupment:~~ Agencies administering means tested, publicly funded assistance programs provide recipients with written advance notice of proposed changes in benefit amounts. Such notices provide information which shall determine if the reduction in cash assistance is because of a properly reported change in circumstances. In most cases, the notice shall document whether the reduction is because of a recoupment of overpaid benefits resulting from intentional failure to report changes. If the notice is not detailed enough to make a determination, the agency which initiated recoupment shall be contacted to obtain the necessary information. Food stamp benefits shall not be delayed beyond normal processing standards pending the outcome of this determination.

~~(c) Calculating benefits:~~ When a recipient's assistance benefits are decreased to recoup an overpayment, that portion of the decrease that is the recoupment shall first be identified. The recoupment is the amount of decrease attributed to the repayment of benefits overissued. If a Title IV A recipient intentionally underreports income, the Title IV A grant is first reduced to reflect the corrected income, then reduced further by the recoupment amount. In such a case, the food stamp calculation would reflect the Title IV A amount reduced because of income, but not the second reduction caused by recoupment.

F. Mass changes: Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it. These changes include, but are not limited to, increases in excluded or deducted items or amounts. Mass changes affecting income include

annual adjustments to social security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions. Information concerning mass change notice and hearing requirements are set forth in 8.100.180.15 NMAC.

~~(1) Federal changes:~~ Authorized adjustments which may affect the food stamp benefit amount for participating households include the maximum food stamp allotment, standard deduction, excess shelter and dependent care deductions, and income eligibility standards. These changes go into effect for all households annually on October 1. Adjustments to federal standards are made prospectively.

~~(2) Mass changes in federal benefits:~~ Cost of living increases and any other mass changes in federal benefits, such as social security and SSI benefits, shall be treated as mass changes for food stamp purposes. The human services department is responsible for automatically adjusting a household's food stamp benefit amount to reflect such a change. Households shall not be responsible for reporting these changes.

~~(3) Mass changes in public assistance:~~ When overall adjustments to cash assistance payments are made, corresponding adjustments in food stamp benefits shall be handled as a mass change. Households shall be given advance notice of any adjustment in the food stamp benefit amount. If a household requests a fair hearing, benefits shall continue at the former amount only if the issue being appealed is that eligibility or food stamp benefit amount was determined incorrectly.

~~(4) Utility standard:~~ Authorized adjustments shall be effective for all October food stamp issuances. Households whose certification periods overlap annual adjustments in the state's mandatory utility allowance shall be informed at the time of certification that the adjustment shall be effective in October; the household shall be informed of the adjusted benefit amount, if known at the time of certification. Adjustments in the state's mandatory utility allowance are made prospectively.

~~(5) Notice of mass changes:~~ Adverse action notices are not required for mass changes resulting from federal adjustments to eligibility standards, the maximum food stamp allotment, standard deduction, shelter deduction, and state adjustments to the mandatory utility standard. Announcement of anticipated mass changes may be made through the media, posters in ISD offices, and other likely places frequented by households, or through a general notice mailed to a participating household. When HSD makes a mass change in food stamp eligibility or benefit amount affecting the entire caseload or a part of it,

affected households shall be mailed a notice of any change, reduction or termination of benefits. HSD shall issue a notice to affected households as far in advance of the household's next scheduled issuance date as is reasonably possible, but by no later than the date the affected benefit is issued.]

[05/15/97; 8.139.120.12 NMAC - Rn & A, 8.139.120.11 NMAC, 02/14/2002; 8.139.120.12 NMAC - Rn & A/E, 8.139.120.10 NMAC, 10/15/2008]

8.139.120.13 REQUIREMENTS FOR MASS CHANGES:

A. Mass changes: Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it.

(1) Mass changes include, but are not limited to, increases in excluded or deducted items or amounts.

(2) Mass changes affecting income include annual adjustments to social security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions.

(3) Information concerning mass change notice and hearing requirements are set forth in 8.100.180.15 NMAC.

(4) Notice of mass changes: Adverse action notices are not required for mass changes resulting from federal adjustments to eligibility standards, the maximum food stamp allotment, standard deduction, shelter deduction, and state adjustments to the mandatory utility standard. Announcement of anticipated mass changes may be made through the media, posters in ISD offices, and other likely places frequented by households, or through a general notice mailed to a participating household. When HSD makes a mass change in food stamp eligibility or benefit amount affecting the entire caseload or a part of it, affected households shall be mailed a notice of any change, reduction or termination of benefits. HSD shall issue a notice to affected households as far in advance of the household's next scheduled issuance date as is reasonably possible, but by no later than the date the affected benefit is issued.

B. Federal changes: Authorized adjustments which may affect the food stamp benefit amount for participating households include the maximum food stamp allotment, standard deduction, excess shelter and dependent care deductions, and income eligibility standards. These changes go into effect for all households annually on October 1. Adjustments to federal standards are made prospectively.

C. Cost of living adjustments: Cost of living increases and any other mass changes in federal benefits, such as social security and SSI benefits, shall be treated as mass changes for food stamp purposes.

The human services department is responsible for automatically adjusting a household's food stamp benefit amount to reflect such a change. Households shall not be responsible for reporting these changes.

D. Mass changes in public assistance: When overall adjustments to cash assistance payments are made, corresponding adjustments in food stamp benefits shall be handled as a mass change. Households shall be given advance notice of any adjustment in the food stamp benefit amount. If a household requests a fair hearing, benefits shall continue at the former amount only if the issue being appealed is that eligibility or food stamp benefit amount was determined incorrectly.

E. Utility standard: Authorized adjustments shall be effective for all October food stamp issuances. Households whose certification periods overlap annual adjustments in the state's mandatory utility allowance shall be informed at the time of certification that the adjustment shall be effective in October; the household shall be informed of the adjusted benefit amount, if known at the time of certification. Adjustments in the state's mandatory utility allowance are made prospectively.

[8.139.120.13 NMAC - Rn & A, 8.139.120.12 NMAC, 02/14/2002; 8.139.120.13 NMAC - N/E, 10/15/2008]

8.139.120.14 OTHER CHANGES AFFECTING FOOD STAMP HOUSEHOLDS

A. Failure to report changes:

(1) If the caseworker discovers that the household failed to report a change as required, the caseworker shall evaluate the change to determine whether the household received benefits to which it was not entitled.

(2) After verifying the change, the caseworker shall initiate a claim against the household for any month in which the household was overissued food stamp benefits. The first month of the overissuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change.

(3) If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced.

(4) No claim shall be established because of a change in circumstances that a household is not required to report.

B. Noncompliance with program requirements or fraud:

(1) **Intentional failure to comply or fraud:** No household shall receive an increase in food stamp benefits when its cash assistance payment is reduced for

intentional failure to comply with the cash assistance program's eligibility requirements or for an act of fraud.

(2) A cash assistance program is defined as a means-tested federal, state, or local welfare or public assistance program, governed by welfare or public assistance laws or regulations, which distributes public funds.

(3) Such programs include, but are not limited to, supplemental security income (SSI), TANF (Title IV-A), and federal or state general assistance (BIA-GA and GA). Failure to comply shall be determined as provided in Paragraph (3) of Subsection I of 8.139.520.9 NMAC.

(4) Verification of recoupment: Agencies administering means-tested, publicly funded assistance programs provide recipients with written advance notice of proposed changes in benefit amounts. Such notices provide information which shall determine if the reduction in cash assistance is because of a properly reported change in circumstances. In most cases, the notice shall document whether the reduction is because of a recoupment of overpaid benefits resulting from intentional failure to report changes. If the notice is not detailed enough to make a determination, the agency which initiated recoupment shall be contacted to obtain the necessary information. Food stamp benefits shall not be delayed beyond normal processing standards pending the outcome of this determination.

(5) Calculating benefits: When a recipient's assistance benefits are decreased to recoup an overpayment, that portion of the decrease that is the recoupment shall first be identified. The recoupment is the amount of decrease attributed to the repayment of benefits overissued. If a Title IV-A recipient intentionally underreports income, the Title IV-A grant is first reduced to reflect the corrected income, then reduced further by the recoupment amount. In such a case, the food stamp calculation would reflect the Title IV-A amount reduced because of income, but not the second reduction caused by recoupment. [8.139.120.14 NMAC - N/E, 10/15/2008]

[8.139.120.14] 8.139.120.15 CHANGE NOTICES

A. Agency responsibilities:

(1) The caseworker shall take action on any change reported by a household, and on any change which becomes known through other sources.

(2) The household shall be issued a change notice.

(a) If there is a reduction or termination of benefits, the household shall be issued an adverse action notice, unless the change has been reported by the household in writing.

(b) If the household reports the change in writing, advance notice of the change in benefit amount is required before the household's next issuance.

(c) If there is no change in the benefit amount, the household shall be notified that the change resulted in no change in benefit amount.

(3) If a household receiving cash assistance reports a change, it shall be considered to have also reported the change for food stamp purposes. A notice shall be sent to the household acknowledging the reported change, even if there is no change in benefits. A notice of adverse action shall be sent if there is a reduction or termination in the food stamp benefit amount and the change was not reported in writing.

B. Notice of adverse action:

(1) Prior to any action to reduce or terminate a household's food stamp benefits within the certification period, the household shall be provided with a timely and adequate advance notice before the adverse action is taken, unless the change was reported by the household in writing. A written change report submitted by the household is subject to the adequate notice requirements in subsection C of ~~[8.139.120.11]~~ 8.139.120.15 NMAC.

(2) At a minimum, the adverse action notice shall include the following information:

(a) proposed action and reason for the action;

(b) month in which the change takes effect;

(c) adjusted benefit amount;

(d) household's right to request a fair hearing, circumstances under which the household can continue benefits at the greater amount, and deadline dates for requesting a hearing;

(e) household's liability for any benefits overissued if the decision of the fair hearing is that the department took the correct action;

(f) general information on whom to contact for additional information, including the right to representation by legal services.

(3) Individual notices of adverse action shall not be provided when:

(a) there is a mass change;

(b) the caseworker determines on the basis of reliable information that the household has moved from the project area;

(c) the caseworker determines on the basis of reliable information that all members of a household have died;

(d) the household has received an increased benefit amount to restore lost benefits, the restoration is complete, and the household has been notified in writing of the date the increased benefit amount would

terminate;

(e) the household's benefit amount varies from month to month within the certification period to take into account changes anticipated at the time of certification, and the household was notified of such variations at the time of certification;

(f) the household applied for cash assistance and food stamp benefits at the same time, has been receiving food stamp benefits pending approval of cash assistance, and the household was notified at the time of certification that food stamp benefits would be reduced upon approval of the cash assistance grant;

(g) a household member is disqualified for intentional program violation, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of the household member.

(h) the household was certified on an expedited basis, is assigned a certification period longer than one month, and verification has been postponed; the household must have received written notice that receipt of benefits beyond the month of application is contingent on the household providing the postponed verification;

(i) the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement is terminated because the treatment center or group living arrangement loses either its certification or its status as authorized representative;

(j) the household voluntarily requests, in writing or in the presence of the caseworker, that its participation be terminated.

C. Adequate notice: If a change was reported in writing that will result in a reduction or termination in food stamp benefits, the household shall be provided with adequate advance written notice confirming the change. Adequate notice does not preclude the household's right to request a fair hearing. The household shall be notified that its benefits are being reduced or terminated no later than the date the household will receive, or would have received, its food stamp benefits. Adequate notice shall be provided when changes reported in writing meet the following conditions:

(1) the household reports the information which results in the reduction or termination;

(2) the reported information is in writing and signed by a member of the household;

(3) the caseworker can determine the household's reduced benefit amount or ineligibility based solely on the information provided by the household in the written report;

(4) the household retains its right

to a fair hearing;

(5) the household retains its right to continued benefits if the fair hearing is requested within the advance notice time limit;

(6) the caseworker continues the household's previous benefit amount if required, within five working days of the household's request for a fair hearing.

[8.139.120.15 NMAC - Rn & A/E, 8.139.120.11 NMAC, 10/15/2008]

~~[8.139.120.12]~~ 8.139.120.16 TRANSFER OF HOUSEHOLDS: When a household transfers from one project area to another, the households case record and computer file shall be transferred accordingly. Procedures for handling households which transfer between project areas within the state and between offices within a single project area are described below.

A. Transfer of inactive cases: Inactive cases are those that have been certified and are subsequently closed. The caseworker in the new project area is responsible for requesting that the case record be transferred. The former project area is responsible for transferring case records and making sure they are complete.

B. Transfer of active cases: Active cases are those presently certified.

(1) Timely reporting: Transfers within the state shall be considered like any other reported change in circumstances. The household must timely report a move and verify its new address and shelter expenses, as well as any change in household composition and income, before benefits may continue ~~[and/or]~~ or be issued (see ~~Paragraph 2 of~~ Subsection A of ~~[8.139.120.10]~~ 8.139.120.12 NMAC). The former project area shall update the household's address on its computer file and transfer the case in active status to the new project area. The new project area shall verify the household's new circumstances, including but not limited to, address, shelter expenses, income, and household composition (see Paragraph 1 of Subsection B of ~~[8.139.120.10]~~ 8.139.120.12 NMAC).

(2) Not reported: If a project area becomes aware that a household has moved but has not been informed of a new in-state address, either by the household or its designee or by another project area, participation shall be terminated immediately based on unverified residence. If the household wishes to continue participation, it must file a new application.

C. Procedures for nonreceipt of benefits: If a household which has moved to a different project area has not received its current month's food stamp benefits, action required by the caseworker shall depend on circumstances described

below:

(1) If the food stamp benefits are returned to the central mail issuance unit, reissuance is authorized by the new project area to the household's address in the new project area.

(2) If the food stamp benefits are not returned to the central mail issuance unit, an affidavit shall be submitted by the new project area, as described in Subsection G of 8.139.610.14 NMAC, replacement of benefits lost in the mail, even though the original issuance was from the former project area. The new project area shall make sure that the household's residence and mailing address are changed prior to submitting the affidavit.

[8.139.120.16 NMAC - Rn & A/E, 8.139.120.12 NMAC, 10/15/2008]

[8.139.120.13] 8.139.120.17 COOPERATION WITH LAW ENFORCEMENT AGENCIES

A. Notwithstanding any other provision of law, upon written request, HSD shall make available to any federal, state, or local law enforcement officer the address, social security number, and photograph (if available) of any household member, if the officer furnishes HSD with the name of the individual and notifies HSD that:

(1) the individual is fleeing to avoid prosecution, or custody or confinement after conviction for a crime, or attempt to commit a crime, that under the law of the place the member is fleeing is a felony, or in New Jersey is a high misdemeanor; or

(2) the individual is violating a condition of probation or parole imposed under federal or state law.

B. Information shall be provided if it is needed for the officer to conduct an official duty related to Paragraphs (1) or (2) of Subsection A of [8.139.120.13] 8.139.120.17 NMAC above; locating or apprehending the individual as an official duty; and the request is being made in the proper exercise of an official duty.

C. Providing information to law enforcement shall not interfere with the department's responsibility to immediately report to the immigration and naturalization service (INS) the ineligibility of any individual who is present in the United States in violation of the Immigration and Nationality Act.

[8.139.120.17 NMAC - Rn & A/E, 8.139.120.13 NMAC, 10/15/2008]

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

This is an emergency amendment to Sections 8, 9, 10, 11 and 13 of 8.139.501 NMAC, effective October 15, 2008.

8.139.501.8 TRANSITIONAL FOOD STAMP BENEFITS

A. Requirement:

Transitional food stamp (TFS) benefits shall be extended to [certain] households that receive food stamp benefits and [were] also receiving [TANF cash assistance to meet on-going basic needs. The food stamp household may be composed entirely of TANF recipients or may include both food stamp only and TANF recipients (a mixed household).] payments from one of the following cash assistance programs:

(1) TANF; or

(2) New Mexico education works; or

(3) transition bonus program; or

(4) GA dependent child program

B. Conditions:

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

(1) [the TANF] cash assistance [payment] payments for any of the cash assistance programs listed above will be terminated; and

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

C. Extending transitional

food stamp benefits: A food stamp household shall be eligible for TFS if the household meets any one of the following conditions:

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

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

(3) **[TANF] Cash assistance ineligibility at recertification:** The [TANF] cash assistance payment is terminated at recertification, and after the interview, because the [TANF] benefit group is determined to be ineligible to continue receiving cash assistance or the benefit group chooses not to continue receiving

cash assistance for any reason.

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

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

(6) **60-month term limit:** The [TANF] cash assistance payment is terminated because at least one adult in the TANF benefit group has reached the TANF 60-month term limit for receipt of cash assistance, the 18 month time limit for the transition bonus program, or the EWP term limit.

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

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

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

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

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

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

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

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

(4) a food stamp household con-

tains an individual who is disqualified due to a failure of the individual to comply with employment and training work requirements.

[8.139.501.8 NMAC - N, 09/01/2003; A/E, 10/15/2008]

8.139.501.9 TRANSITIONAL BENEFIT PERIOD

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

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

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

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

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

[8.139.501.9 NMAC - N, 09/01/2003; A/E, 10/15/2008]

8.139.501.10 DETERMINING THE TRANSITIONAL FOOD STAMP BENEFIT AMOUNT

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

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

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

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

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

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

[8.139.501.10 NMAC - N, 09/01/2003; A/E, 10/15/2008]

8.139.501.11 REPORTING

REQUIREMENTS DURING THE TRANSITIONAL BENEFIT PERIOD

A. Suspending reporting requirements for TFS households:

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

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

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

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

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

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

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

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

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

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

shall be required to file an application for recertification of eligibility.

[8.139.501.11 NMAC - N, 09/01/2003; A/E, 10/15/2008]

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

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

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

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

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

E. moves out of state.

[8.139.501.13 NMAC - N, 09/01/2003; A/E, 10/15/2008]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to Section 10 of 8.139.510 NMAC, effective October 15, 2008.

8.139.510.10 EXCLUSIONS

A. In determining the resources of a household, the following shall be excluded:

(1) home and surrounding property (Subsection C of 8.139.510.10 NMAC);

(2) household and personal goods (Subsection D of 8.139.510.10 NMAC);

(3) life insurance, deferred compensation and joint pension funds (Subsection D of 8.139.510.10 NMAC);

(4) all retirement accounts with federal tax-preferred status from the food stamp asset test as well as any tax-preferred retirement accounts that Congress creates in the future;

(5) all tax-preferred education accounts, such as 529s;

~~(4)~~ (6) income-producing property (Subsection E of 8.139.510.10 NMAC);

~~(5)~~ (7) work-related equipment (Subsection F of 8.139.510.10 NMAC);

~~(6)~~ (8) inaccessible resources (Subsection G of 8.139.510.10 NMAC);

(7) (9) resources excluded by federal law (8.139.527 NMAC);

~~(8)~~ (10) resources of non-household members (Subsection F of 8.139.510.8 NMAC);

(9) (11) other exempt resources,

such as those of an SSI or Title IV-A recipient;

~~[(40)]~~ **(12)** excluded monies kept in a separate account and not commingled with non-excluded funds; when commingled, the excluded monies retain their exclusion for a period of six months from the date they are commingled.

~~[(44)]~~ **(13) Vehicles:** The entire value of a vehicle owned by a household member shall be excluded as a countable resource as set forth at Subsection E of 8.139.510.9 NMAC.

B. Exceptions:

(1) Educational loans and grants of students, commingled with non-excluded funds, retain the exemption for the period over which they are intended to be used.

(2) Operating funds of a self-employment enterprise commingled with non-excluded funds retain the exemption for the period over which they have been prorated as income.

C. Home and surrounding property: A household's home, and surrounding property which is not separated from the home by intervening property owned by others, shall be excluded. Public rights of way, such as roads that run through the surrounding property and separate it from the home, do not affect the exemption of the property. The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. No specific time limit is imposed in determining that the absence is temporary. A household that currently does not own a home, but owns or is purchasing a lot on which it intends to build, or is building a permanent home, receives an exclusion for the value of the lot, and, if partially completed, for the home. If part of the land surrounding a home is rented, the land retains this exclusion and the income-producing test in Subsection E of 8.139.510.10 NMAC does not apply. Any income received from renting part of the surrounding property shall be counted in determining income eligibility and food stamp benefit amount.

D. Personal effects:

(1) Households goods, livestock, and personal effects, including one burial plot per household member, and the cash value of life insurance policies shall be excluded. Any amount that can be withdrawn from a prepaid burial plan shall be counted as a resource and cannot be excluded under this provision.

(2) The cash value of pension plans or pension funds shall be excluded.

(3) IRAs and Keogh plans involving no contractual relationship with individuals who are not household members are not excluded.

E. Income-producing property:

(1) Exclusions: The following income-producing property shall be excluded:

(a) Property which annually produces income consistent with its fair market value, even if used on a seasonal basis. Such property includes rental and vacation homes. If the property cannot produce income consistent with its fair market value because of circumstances beyond the household's control, the exclusion remains in effect.

(b) Property, such as farm land, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming continues to be excluded for one year from the date that the household member ends self-employment farming.

(c) An installment contract for the sale of land or a building that is producing income consistent with its fair market value. The value of the property sold under an installment contract or held as security in exchange for the purchase price consistent with the fair market value of that property is also excluded. The value of personal property sold on installment contracts such as boats, automobiles, etc. is also treated in this manner as long as the property sold on contract is not part of a self-employment enterprise.

(2) Determining fair market value: The following guidelines shall be used to determine fair market value:

(a) If it is questionable that property is producing income consistent with its fair market value, the caseworker shall contact local realtors, tax assessors, the small business administration, farmer's home administration or other similar sources to determine the prevailing rate of return. If it is determined that property is not producing income consistent with its fair market value, such property is counted as a resource. If property is leased for a return that is comparable to that on other property in the area leased for similar purposes, it is considered income producing consistent with its fair market value and is not counted as a resource.

(b) Property exempt as essential to employment need not be producing income consistent with its fair market value. For example, the land of a farmer is essential to the farmer's employment; therefore, a good or bad crop year does not affect the exemption of such property as a resource.

F. Work-related equipment exclusion: Work-related equipment, such as the tools of a trades-person or the machinery of a farmer, which are essential to the employment or self-employment of a household member are excluded. The tools

of a trades-person are excluded, and remain exempt, if the trades-person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

G. Inaccessible resources: Resources shall be excluded if their cash value is not accessible to the household, such as, but not limited to:

(1) Security deposits on rental property or utilities;

(2) Property in probate: When a decision is rendered by the court explaining how the property is to be divided, the property is no longer in probate, whether or not the household signs papers;

(3) Real property that the household is making a good faith effort to sell at a reasonable price and which has not been sold; and

(4) Irrevocable trust funds: Any funds in a trust, or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, is considered inaccessible to the household if:

(a) the trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(b) The trustee administering the funds is:

(i) a court;

(ii) an institution, corporation, or organization not under the direction or ownership of any household member;

(iii) an individual appointed by the court with court-imposed limitations placed on the use of the funds.

(c) the trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(d) the funds held in an irrevocable trust are either:

(i) established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust, or to pay the educational or medical expenses of any person named by the household creating the trust; or

(ii) established from non-household funds by a non-household member.

(5) Insignificant return: Any resource, that as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great.

(a) A resource shall be so identified if its sale or other disposition is unlikely to produce any significant amount of

funds for the support of the household.

(b) This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments, nor to vehicles.

(c) The caseworker may require verification of the value of a resource to be considered inaccessible if the information provided by the household is questionable.

(d) The following definitions shall be used in determining whether a resource may be excluded under this provision:

(i) "significant return" is any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that is estimated to be one half or more of the applicable resource limit for the household;

(ii) "any significant amount of funds" are funds amounting to one-half or more of the applicable resource limit for the household.

H. Joint property:

(1) **Joint resources:** Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by an applicant household that such resources are inaccessible to it. The household must verify that:

(a) it does not have the use of the resource;

(b) it did not make the purchase or down payment;

(c) it does not make the continuing loan payments, and

(d) the title is transferred to or retained by the other household.

(e) if a household can demonstrate that it has access to only a part of the resource, the value of that part is counted toward the household's resource level; a resource shall be considered totally inaccessible, if it cannot be practically subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply; for purposes of this provision, ineligible aliens or disqualified individuals residing with a household are considered household members.

(2) **Joint bank accounts:** If signatories to a joint bank account are separate households, the funds in the account are considered available to each household to the extent that it has contributed to the account. If the participating household has not contributed to the account, the funds are considered available only if there is clear and convincing evidence that the other household intends that the participating household actually own the funds.

I. Residents of shelters for battered women and children: Resources shall be considered inaccessible

to individuals residing in shelters for battered women and children if:

(1) Resources are jointly owned by shelter residents and members of their former household, and

(2) Shelter resident's access to the value of the resource(s) is dependent on the agreement of a joint owner residing in the former household.

J. Other exempt resources:

(1) **Earmarked resources:** Government payments designated for the restoration of a home damaged in a disaster shall be excluded, if the household is subject to a legal sanction if the funds are not used as intended. However government payments designed to bring homes "up to code" are not exempt and are counted as a resource.

(2) **Prorated income:** Resources, such as those of students or self-employed individuals which have been prorated as income, shall be excluded.

(3) **Indian lands:** Indian land held jointly by a participating household and the tribe, or land that can be sold only with the approval of the department of interior's bureau of Indian affairs, shall be excluded.

(4) **Business loan collateral:** Non liquid assets against which a lien has been placed as a result of taking out a business loan, when the household is prohibited by the security or loan agreement with the lien holder (creditor) from selling the assets, shall be excluded.

(5) **Property for vehicle maintenance and use:** Property, real or personal, is excluded to the extent that it is directly related to the maintenance or use of a vehicle excluded under Paragraph 1 of Subsection E of 8.139.510.9 NMAC. Only that part of real property determined necessary for actual maintenance or use is excludable under this provision.

(6) **Title IV-A/SSI recipients:** The resource of any household member who receives:

(a) supplemental security income (SSI) benefits under Title XVI of the Social Security Act; or

(b) aid to the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security Act; or

(c) benefits under part A of Title IV of the Social Security Act shall be considered exempt for food stamp purposes provided resources are also considered exempt under the applicable titles or parts of the Social Security Act.

[02/01/95, 10/01/95, 02/01/96, 10/01/96, 07/01/97, 06/01/99; 8.139.510.10 NMAC - Rn, 8 NMAC 3.FSP513, 05/15/2001; A, 02/01/2002; A/E, 10/15/2008]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to Section 9 of 8.139.527 NMAC, effective October 15, 2008.

8.139.527.9 GENERAL:

A. The value of assistance to children under P.L. 79-396, Section 12(e) of the National School Lunch Act, as amended by Section 9(d) of P.L. 94-105. This law authorizes the school lunch program, the summer food service program for children, the commodity distribution program, and the child and adult care food program. The exclusion applies to assistance provided to children rather than that paid to providers.

B. The value of assistance to children under P.L. 89-642, Section 11(b) of the Child Nutrition Act of 1966 is not considered income or resources for any purpose. This law authorizes the special milk program, the school breakfast program, and the special supplemental food program for women, infants, and children (WIC).

C. Under WIC demonstration projects, coupons that may be exchanged for food at farmers' markets by P.L. 100-435, Section 501, 9/19/88, which amended Section 17(m)(7) of the Child Nutrition Act of 1966.

D. **Reimbursements** received under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, P.L. 91-646, Section 216.

E. Any payment under Titles I and II of the Domestic Volunteer Services Act of 1973, P.L. 93-113.

(1) Payments under Title I of the Act, including payments from VISTA, university year for action and the urban crime prevention program, made to volunteers will be excluded for an individual receiving FS benefits or public assistance at the time the individual joined the Title I program, except that households which were receiving an income exclusion for a VISTA or other Title I subsistence allowance at the time of conversion to the Food Stamp Act of 1977 continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion.

(2) Temporary interruptions in food stamp participation do not alter the exclusion after an initial determination has been made.

(3) New applicants who were not receiving food stamps at the time they joined VISTA will have their volunteer payments counted as earned income.

(4) Payments to volunteers under Title II, including RSVP, foster grandparent program and senior companion program, are excluded as income.

F. Payments precipitated by an emergency or major disaster as defined in the Disaster Relief Act of 1974, P.L. 93-288, Section 312(d), as amended by the Disaster Relief and Emergency Assistance Amendments of 1988, P.L. 100-707, Section 105(i). This exclusion applies to federal assistance, including Federal Emergency Management Assistance (FEMA) funds, provided to directly affected individuals and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. Most, but not all FEMA funds are excluded. For example, some payments made to homeless people to pay for rent, mortgage, food, and utility assistance when there is no major disaster or emergency are not excluded under this provision. A major disaster is any natural catastrophe such as a hurricane, drought, or, regardless of cause, any fire, flood, or explosion, which the president determines causes damage of enough severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. An emergency is any occasion or instance for which the president determines that federal assistance is needed to supplant state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

G. The amount of any home energy assistance payments or allowances provided directly to, or on behalf of, a household under the Low Income Home Energy Assistance Act, P.L. 99-425, Section (e), 9/30/86. In determining any excess shelter expense deduction, the full amount of such payments or allowances is deemed to be expended by such household for heating or cooling expenses.

H. Amounts made available for tuition and fees, and, for students attending an institution at least half time, for books, supplies, transportation and miscellaneous personal expenses (other than room, board, and dependent care) provided under Title IV of the Higher Education Act Amendments of 1986, P.L. 99-498, Section 479B, as amended by P.L. 100-50, June 3, 1987, and by the bureau of Indian affairs.

(1) The Higher Education Amendments of 1992, P.L. 102-325, 7/23/92, contain two separate provisions affecting the treatment of payments made under the Higher Education Act. In regard to Title IV, Student Assistance, Part F,

Section 479B provides that: Notwithstanding any other provision of law, student financial assistance received under Title IV or under bureau of Indian affairs student assistance programs, will not be counted in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any federal, state, or local program financed in whole or in part with federal funds. Educational assistance authorized under Title IV will be excluded with respect to determinations beginning on or after July 1, 1993.

(2) Excluded educational assistance authorized under Title IV includes the following:

(a) basic educational opportunity grants (BEOG or PELL);

(b) presidential access scholarships (super PELL grants);

(c) supplemental educational opportunity grants (SEOG);

(d) state student incentives grants (SSIG);

(e) federal direct student loan programs (FDSLP) (formerly GSL and FFELP);

(i) federal direct supplemental loan program (provides loans to students);

(ii) federal direct PLUS program (provides loans to parents);

(iii) federal direct Stafford loan program;

(iv) federal consolidated loan program;

(f) direct loans to students in institutions of higher education (Perkins loans, formerly NDSL);

(g) federal work study funds (Not all federal work study funds come under Title IV of the Higher Education Act);

(h) TRIO grants (to organizations or institutions for students from disadvantaged backgrounds);

(i) upward bound (some stipends go to students);

(ii) student support services;

(iii) Robert E. McNair post-baccalaureate achievement;

(i) Robert C. Byrd honors scholarship program;

(j) college assistance migrant program (CAMP) for students whose families are engaged in migrant and seasonal farm work;

(k) high school equivalency program (HEP);

(l) national early intervention scholarship and partnership program.

(3) There is only one BIA student assistance program per se. It is the higher education grant program, which is sometimes called the scholarship grant program. Education or training assistance received

under any BIA program must be excluded. There is an adult education program providing money to adults to get a GED, attend technical schools, and to receive job training. There is also an employment assistance program. In addition, education and training may be made available under separate programs like the Indian child and family programs. Each tribe has a BIA agency that may be contacted for more information about education and training assistance.

(4) Section 480(b) of Title IV provides that the changes made in part F of Title IV of the Act by the amendment made by this section shall apply with respect to determinations of need under such part F for award years beginning on or after July 1, 1993.

(5) Under Title XIII, Indian Higher Education Programs, Part E—Tribal Development Student Assistance Revolving Loan Program, under the Tribal Development Student Assistance Act, Section 1343(c) provides that for purposes of determining eligibility, loans provided under this program may not be considered in needs analysis under any other federal law, and may not penalize students in determining eligibility for other funds. The Part E exclusion was effective October 1, 1992.

(6) Payments received under the Carl D. Perkins Vocational Education Act, Section 507, P.L. 98-524, as amended by P.L. 101-392, 9/25/90, Section 501 and 701 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, are excluded.

(7) Amounts made available for tuition and fees, and for students attending an institution at least half time, books, supplies, transportation, dependent care, and miscellaneous personal expenses (other than room and board) are excluded. This provision was effective July 1, 1991. The programs under the Carl D. Perkins Act include the following:

(a) Indian vocational education program;

(b) native Hawaiian vocational education program;

(c) state vocational and applied technology education program, which contains the:

(i) state program and state leadership activities;

(ii) program for single parents, displaced homemakers, and single pregnant women;

(iii) sex equity program;

(iv) programs for criminal offenders;

(v) secondary school vocational education program;

(vi) postsecondary and adult vocational education program;

(vii) state assistance for

vocational education support programs by community based organizations;

(viii) consumer and homemaking education program;

(ix) comprehensive career guidance and counseling program;

(x) business-labor-education partnership for training program;

(d) national tech-prep education program;

(e) state-administered tech-prep education program;

(f) supplementary state grants for facilities and equipment and other program Improvement Activities;

(g) community education employment centers program;

(h) vocational education light-house schools program;

(i) tribally controlled postsecondary vocational Institutions program;

(j) vocational education research program;

(k) national network for curriculum coordination in vocational and technical education;

(l) national center or centers for research in vocational education;

(m) materials development in telecommunications program;

(n) demonstration centers for the training of dislocated workers program;

(o) vocational education training and study grants program;

(p) vocational education leadership development awards program;

(q) vocational educator training fellowships program;

(r) internships for gifted and talented vocational education students program;

(s) business and education standards program;

(t) blue ribbon vocational education program;

(u) educational programs for federal correctional Institutions;

(v) model programs of regional training for skilled trades;

(w) demonstration projects for the integration of vocational and academic learning program;

(x) cooperative demonstration programs;

(y) bilingual vocational training program;

(z) bilingual vocational instructor training program;

(aa) bilingual materials, methods, and techniques program;

(8) Federal Perkins Loans authorized under Part E of Title IV of the Higher Education Act must be handled in accordance with other Title IV income.

(9) Section 5(d)(3) of the Food Stamp Act, as amended by P.L. 101-624,

Food Agriculture, Conservation and Trade Act of 1990, Title XVIII, Mickey Leland Memorial Domestic Hunger Relief Act, 11/28/90, and P.L. 102-237, Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Section 903, provide that educational monies are excluded from income:

(a) when they are awarded to a person enrolled at a recognized institution of post-secondary education, at a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or obtaining the equivalent of (GED);

(b) to the extent that they do not exceed the amount used for or made available as an allowance determined by the school, institution, program, or other grantor, for tuition, mandatory fees, including the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved, books, supplies, transportation, and other miscellaneous personal expenses (other than living expenses) of the student incidental to attending such school, institution, or program; and

(c) to the extent loans include any origination fees and insurance premiums.

I. Payments, allowances, and earnings to individuals participating in programs under the Job Training Partnership Act (JTPA) of 1982, P.L. 97-300 except for on-the-job training payments provided under section 204(5) of Title II of the JTPA to dependents 19 years of age or older.

J. Payments, allowances, and earnings of individuals participating in projects conducted under Title I of the National and Community Services Act of 1990. Such projects were considered to be conducted under the JTPA, per P.L. 101-610, Section 117(d), 11/16/90, which clarified Section 142(b) of the JTPA. There are about 47 different NCSA programs, and they vary by state.

K. Funds received by individuals 55 and older under the Senior Community Service Employment Program under Title V of the Older Americans Act, P.L. 100-175, Section 166, 11/29/87. Each state and eight organizations receive Title V funds. The eight organizations that receive Title V funds are:

(1) green thumb,

(2) national council on aging,

(3) national council of senior citizens,

(4) American association of retired persons,

(5) U.S. forest service,

(6) national association for Spanish speaking elderly,

(7) national urban league,

(8) national council on black aging.

L. Any amount by which the basic pay of an individual is reduced under P.L. 99-576, Veteran's Benefits Improvement and Health Care Authorization Act of 1986, Section 303(a)(1), 8/7/86, which amended Section 1411(b) and 1412(c) of the Veterans Educational Act of 1984 (GI Bill), which will revert to the treasury. Title 38 of the USC, Chapter 30, Section 1411 refers to basic educational assistance entitlement for service on active duty, and Section 1412 refers to basic educational assistance entitlement for service in the selected reserve. Section 216 of P.L. 99-576 authorized stipends for participation in study of Vietnam-era veterans' psychological problems. These payments are not excluded by law.

M. P.L. 100-242, Section 126(c)(5)(A), 11/6/87, the Housing and Community Development Act of 1987, excludes most increases in earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by Section 126. Demonstration projects are authorized by this law for Charlotte, NC, and ten additional locations. The affected regional offices are contacted individually regarding these projects.

N. P.L. 101-625, Section 522(i)(4), 11/28/90, Cranston-Gonzales National Affordable Housing Act, excludes most increases in the earned income of a family residing in certain housing while participating in HUD demonstration projects authorized by this public law. Demonstration projects are authorized by this law for Chicago, IL, and three other locations. The affected regional offices are contacted individually regarding these projects.

O. The value of any child care payment made under the Family Support Act, P.L. 100-485, Section 301, which amended Section 402 (g) (1)(E) of the Social Security Act, including payments made under Title IV-A of the Social Security Act, and including transitional child care payments (entitlement payments).

P. "At risk" block grant child care payments are excluded by P.L. 101-508, Section 5801, which amended Section 402(i) of the Social Security Act (11/5/90). No deduction may be allowed for any expense covered by such payments.

Q. The value of any child care provided or arranged, or any amount received as payment for such care or reimbursement for costs incurred for such care is excluded by P.L. 102-586, Section 8, signed 11/4/92, which amended the Child Care and

Development Block Grant Act Amendments of 1992 by adding section 658S. The value or amount of child care is excluded from income for purposes of any federal or federally-assisted program that bases eligibility or amount of benefits on need. These payments are made under the Social Security Act, as amended.

R. A payment made to a participant for costs that are necessary and directly related to participation in a work program. Such costs include, but are not limited to, dependent care costs, transportation, expenses related to work, training or education, such as uniforms, personal safety items, other necessary equipment, and books or training manuals. Such costs may not include the cost of meals away from home. In addition, the value of dependent care services provided for or arranged for are excluded.

S. The full amount of any public assistance (PA) or general assistance (GA) housing assistance payment made to a third party on behalf of a household residing in transitional housing for the homeless by P.L. 103-66, the Mickey Leland Childhood Hunger Relief Act, 1993, which revised Section 5(k)(2)(F) of the Food Stamp Act. The exclusion is effective 9/1/94.

T. Payments made under the Radiation Exposure Compensation Act, P.L. 101-426, Section 6 (h)(2), 10/15/90.

U. All payments from the agent orange settlement fund or any other fund established pursuant to the settlement in the agent orange product liability litigation retroactive to January 1, 1989 in accordance with the Agent Orange Compensation Exclusion Act, P.L.101-201, 12/6/89. An agent orange disabled veteran receives yearly payments. Survivors of deceased disabled veterans receive a lump-sum payment. These payments are disbursed by the AETNA insurance company.

(1) P.L. 101-239, signed 12/19/89, the Omnibus Budget Reconciliation Act of 1989, Section 10405, also excluded payments made from the agent orange settlement fund or any other fund established pursuant to the settlement in the **In re: agent orange product liability litigation**, M.D.L. No. 381 (E.D.N.Y.) from income and resources in determining eligibility for the amount of benefits under the food stamp program.

(2) P.L. 102-4, Agent Orange Act of 1991, 2/6/91, authorized veterans' benefits to some veterans with service-connected disabilities resulting from exposure to agent orange. Such VA payments are not excluded by law.

V. Any earned income tax credit is excluded from income, and is not taken into account in determining resources for the month of receipt and the following month, under P.L. 101-508, 11/5/90, the

Omnibus Budget Reconciliation Act of 1990, Title XI Revenue Provisions, Section 11111, Modifications of Earned Income Tax Credit, subsection (b). This provision is effective for taxable years beginning after December 31, 1990. Subsequently, the September 1988 amendments to the Food Stamp Act require the exclusion from income of any payment made to a household under Section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit). The August 1993 amendments to the Food Stamp Act require the exclusion from resources of any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in the program continuously during the 12-month period. The 1993 amendments are to be implemented September 1, 1994.

W. Payments made to individuals because of their status as victims of Nazi persecution per P.L. 103-286, August 1, 1994. The exclusion is effective for eligibility and benefit determinations made on or after August 1, 1994, and excludes payments made before, on or after August 1.

X. Combat related military pay if the pay is the result of deployment to or service in a combat zone and was not received immediately prior to serving in combat zone.

[02/01/95; 8.139.527.9 NMAC - Rn, 8 NMAC 3.FSP.527(A), 05/15/2001; A/E, 10/15/2008]

NEW MEXICO LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING

CHAPTER 35 LIVESTOCK MARKETING

PART 3 HUMANE HANDLING OF LIVESTOCK BY LIVESTOCK MARKETS AND FACILITIES

21.35.3.1 ISSUING AGENCY: New Mexico Livestock Board; 300 San Mateo, NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone (505)841-6161. [21.35.3.1 NMAC - N, 10/30/2008]

21.35.3.2 SCOPE: All owners and operators of livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants. [21.35.3.2 NMAC - N, 10/30/2008]

21.35.3.3 STATUTORY AUTHORITY: Sections 77-2-7, 77-2-22, 77-9A-3, 77-9A-4, 77-10-2, 77-10-3, 77-

10-8, 77-10-10 and such other regulatory authority as provided in Chapter 77 NMSA 1978.

[21.35.3.3 NMAC - N, 10/30/2008]

21.35.3.4 DURATION: Permanent.

[21.35.3.4 NMAC - N, 10/30/2008]

21.35.3.5 EFFECTIVE DATE: October 30, 2008, unless a later date is cited at the end of a section.

[21.35.3.5 NMAC - N, 10/30/2008]

21.35.3.6 OBJECTIVE: To establish rules governing the humane handling of livestock.

[21.35.3.6 NMAC - N, 10/30/2008]

21.35.3.7 DEFINITIONS:

A. "Animal" means livestock including cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

B. "Board" means the New Mexico livestock board.

C. "Facilities" means livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants.

D. "Humanely euthanized" means to kill by mechanical method (gunshot or captive bolt) or chemical method that rapidly and effectively renders the animal insensitive to pain.

E. "Livestock market" means any facility in the state of New Mexico, which is used for the purpose of holding consignment sales of livestock.

F. "Non-ambulatory animal" means an animal that is unable to stand and walk without assistance.

G. "Operator" means a person in control of the management or operation of a livestock auction market, including a licensee under Article 10 of Chapter 77.

[21.35.3.7 NMAC - N, 10/30/2008]

21.35.3.8 REQUIRED CONDUCT BY LIVESTOCK AUCTION MARKET:

A. An operator shall not buy, sell or receive a non-ambulatory animal.

B. An operator shall not process, butcher or sell meat or products of non-ambulatory animals.

C. An operator shall not hold a non-ambulatory animal without taking immediate action to humanely euthanize the animal or to provide immediate veterinary treatment.

D. An operator shall not, at any time, either while the animal is on the premises or in transit, drag or push with equipment a non-ambulatory animal. Such animal must be moved with a sling, a

stoneboat or other sled-like or wheeled conveyance, a soft-lay rope, a padded cable or chain or a web type belt (no bare chains). Once a vehicle has entered the official premises of the establishment, it is considered to be within the operator's premises.

E. An operator shall not consign, ship or accept any non-ambulatory animal for transporting or delivering.

F. An operator is responsible for the wrongful acts or omissions of agents and employees.

G. An operator must adequately train and supervise agents and employees to assure that such agents and employees do not engage in wrongful conduct.

H. Any violation of this rule or any other rule of the board will subject the licensee to criminal penalties and license revocation.

[21.35.3.8 NMAC - N, 10/30/2008]

21.35.3.9 REQUIRED CONDUCT BY FACILITIES:

A. Livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants are subject to the requirements of 21.35.3.8 NMAC and must adhere to those requirements; provided, however, that rendering plants may process, butcher and sell meat or products of non-ambulatory animals so long as they do not engage in those activities for purpose of human consumption.

B. Any violation of this rule or any rules of the board or of the Chapter 77 NMSA 1978 will subject the offender to criminal penalties as provided in Chapter 77 NMSA 1978.

[21.35.3.9 NMAC - N, 10/30/2008]

HISTORY OF 21.35.3 NMAC: [RESERVED]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.3.7 NMAC and 21.32.3.12 NMAC, effective 10/30/2008.

21.32.3.7 DEFINITIONS:

A. "Approved eartag" shall be any tag that has received the approval of the livestock board prior to application. The tag must clearly and ~~[conspicuously]~~ conspicuously show the owner of the calf prior to sale. The owner may be shown by use of the actual name to which the brand is recorded, brand image, brand master number or milk permit number.

B. "Baby calf" means a bovine animal less than ~~[sixty]~~ thirty (30) days of age ~~[born at a bona fide dairy or feedlot and which has never been bought or~~

~~sold since birth]~~.

C. "Board" means the New Mexico livestock board.

D. "Calf-raising facility and or feed yard" means an established entity in the state of New Mexico for the primary purpose of raising baby calves that are not part of a cow-calf pair that have multiple herds of origin.

E. "Cow-calf pair" means a cow and its suckling progeny; a cow nursing an adopted calf does not qualify as a "cow-calf pair."

F. "Dairy" means an established entity in the state of New Mexico in business for the primary purpose of fluid milk production and which has been assigned a dairy I.D. number by the New Mexico department of agriculture.

G. "Director" means the executive director of the New Mexico livestock board.

H. "Feedlot" means an established entity in the state of New Mexico for the primary purpose of feeding cattle.

I. "Inspector" means any duly authorized or commissioned officer of the livestock board.

J. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

K. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

L. "Person" means an individual, partnership, association, or operation.

M. "Quarantine" or "quarantined area" means any area within the state of New Mexico whose physical boundaries have been established by order of the board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.

N. "Quarantined livestock" means any livestock found by the board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.

O. "Telephone permit" means the authorization to transport livestock to an approved New Mexico auction without prior inspection, by use of a confidential number issued to the owner or owner's agent, which identifies the specific animals and shipment to a specific auction.

P. "Transient livestock" means livestock transported through the state of New Mexico from another state or country whose destination is not within the state of New Mexico.

Q. "Transient livestock

with New Mexico destination" means livestock imported in the state of New Mexico from another state or country, or being transported within the state and not having reached the final destination for feed or pasture purpose.

[21.32.3.7 NMAC - Rp, 21 NMAC 32.3.7, 5/28/2004; A, 10/30/2008]

21.32.3.12 RE-SALE OF BABY CALVES:

A. All baby calves identified under the provisions of 21.32.3.11 NMAC, and which are re-sold, must have the original eartag intact and readable ~~[except that the original ear tag from the premise of origin may be replaced by an approved eartag of the buyer, provided that said buyer has a record keeping system approved by the livestock board]~~. Buyer must maintain a record keeping system approved by the livestock board. This record keeping system must be capable of identifying premise of origin and other owners, (if any), and any corresponding bill of sales in less than 24 hours. The seller must furnish the buyer a copy of the baby calf bill of sale from the original owner, which identifies the calf by eartag number. All subsequent buyers of the calf will maintain the eartag and a copy of the corresponding original bill of sale, provided by the seller.

B. Any sale of calves after being branded and the brands being peeled and healed, will be accomplished in the same manner as described in Section 77-9-21 through 77-9-23, NMSA 1978, and a tag leading to a premise of origin must be retained in the calf's ear.

C. All baby calves that are not part of a cow-calf pair imported into New Mexico from ~~[outside]~~ outside the state must be ear tagged from the premise of origin.

[21.32.3.12 NMAC - Rp, 21 NMAC 32.3.12, 5/28/2004; A, 10/30/2008]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to 21.32.4 NMAC Sections 7, 8 and 11, effective 10/30/2008.

21.32.4.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Director" means the executive director of the New Mexico livestock board.

C. "Holstein cross" means bovines that have some percentage of holstein or other dairy breed in their genetic lineage.

D. "Inspector" means any

duly authorized or commissioned officer of the livestock board.

E. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

F. "New Mexico Livestock" means any livestock raised or pastured or fed within the state of New Mexico.

G. "Person" means an individual, partnership, association or operation.

H. "Quarantine" or "quarantined area" means any area within the state of New Mexico whose physical boundaries have been established by order of the board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.

I. "Quarantined livestock" means any livestock found by the board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.

J. "Sealed vehicle" means a vehicle for transporting livestock that has its gates or doors closed and which gates or doors have an attached strip of metal, which is numbered for identification. The metal strip is attached to the gates or doors in a manner that would break the "seal" if the vehicle were to be opened.

K. "Telephone permit" means the authorization to transport livestock to an approved New Mexico auction without prior inspection, by use of a confidential number issued to the owner or owner's agent, which identifies the specific animals and shipment to a specific auction.

L. "Transient livestock" means livestock transported through the state of New Mexico from another state or country whose destination is not within the state of New Mexico.

M. "Transient livestock with New Mexico destination" means livestock imported in the state of New Mexico from another state or country or being transported within the state and not having reached the final destination for feed or pasture purpose.

N. "Universal swine earnotch (1-3-9) system" means the system of cutting notches in the ears of swine, at specific locations on the ear, which correspond to number values. The notches' values added together provide identification numbers for the pig. The right ear's value shall be the litter number. The left ear shall be the individual pig number in that litter.

[3/1/99; 21.32.4.7 NMAC - Rn, 21 NMAC 32.4.7, 12/31/2007; A, 10/30/2008]

21.32.4.8

IMPORT REQUIRE-

MENTS FOR CATTLE, INCLUDING BISON:

A. A health certificate from the state of origin and a New Mexico entry permit are required on all shipments of cattle entering New Mexico.

B. Upon arrival at destination, the ~~shipper~~ owner or agent must notify the New Mexico livestock board inspector in order to make the arrangements for inspection of the shipments prior to commingling with other cattle or release to pasture.

C. The inspection will be for the purpose of determining that the shipment has met all applicable import requirements including but not necessarily limited to: scabies dipping, brucellosis testing, tuberculosis testing, brand regulations and inspection to confirm the shipment does conform to the description of the animals as stated on the required permit and health certificate.

D. The test charts and dipping certificates, when applicable, shall remain with the shipment upon arrival; otherwise the shipment will be quarantined until evidence has been presented.

E. There will be an import inspection charge to be paid at completion of the inspection, except when there is a waiver of import inspection and/or fees for import cattle moving in accordance with a commuter agreement as described in [21 NMAC 32.3.8.6 ~~now~~] Subsection F of 21.32.3.8 NMAC, below.

F. Import inspections and/or fees will be waived upon request of the owner of bona fide and approved Colorado or Arizona and New Mexico commuter cattle when that owner brings commuter cattle to New Mexico as part of his/her normal commuter cattle operation and when the following conditions are met:

(1) the owner notifies the appropriate New Mexico livestock board inspector prior to movement and furnishes the appropriate New Mexico livestock board inspector with a valid copy of the Colorado or Arizona export inspection within forty-eight hours (two days) after arrival in New Mexico; and

(2) the owner understands that the New Mexico livestock board inspector may conduct a spot check inspection of arriving cattle for which no fee will be charged; and

(3) Colorado and Arizona maintain at least "A" status in the brucellosis eradication program; and

(4) the Colorado board of stock inspection or the Arizona livestock board has conducted a visual and complete inspection of the commuter herd owner's cattle departing Colorado or Arizona; and

(5) all of the cattle arriving from Colorado or Arizona are owned by the commuter herd operator and are those cattle and

their offspring, which were originally shipped from New Mexico to Colorado or Arizona and are now returning to New Mexico; none of the cattle arriving are cattle which were introduced into the herd in Colorado or Arizona from sources other than the owner's bona fide and approved commuter herd; and

(6) all health requirements for commuter herd operations are met, to include necessary health certificates and permits.

[3/1/99; 21.32.4.8 NMAC - Rn, 21 NMAC 32.4.8, 12/31/2007; A, 10/30/2008]

21.32.4.11 TUBERCULOSIS REQUIREMENTS FOR INTERNATIONAL IMPORTS:

A. All sexually intact cattle, from any foreign country or part thereof, with no recognized comparable tuberculosis status that are to be held for purposes other ~~[that]~~ than immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be under quarantine on the first premises of destination in New Mexico pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival and that test shall be performed at the owner's expense.

B. All sexually intact cattle, from any foreign country or part thereof, with no recognized comparable tuberculosis status that are destined for immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be tested at the port-of-entry into New Mexico under the supervision of the port veterinarian and these cattle shall be moved to the slaughter facility or quarantined feedlot only in sealed trucks with a permit issued by the New Mexico livestock board or USDA personnel and, if destined to a quarantined feedlot, shall be "S" branded upon arrival at the feedlot.

C. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have fully implemented the "control/preparatory" phase of the Mexican tuberculosis eradication program by September 1, 1995, after having been tested negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within sixty (60) days prior to entry into the United States and may then move without further restriction within New Mexico.

D. Steers and spayed heifers may not be imported into New Mexico from Mexican states that have not implemented the "control/preparatory" phase of the Mexican tuberculosis eradication program by September 1, 1995.

E. Steers and spayed heifers from Mexico may enter from

Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have fully implemented the "eradication" phase of the Mexican tuberculosis eradication program by March 1, 1997, after having been tested negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within sixty (60) days prior to entry into the United States or that originate from herds within those states that are equal to United States accredited TB-free herds and that are moved directly from the herd of origin across the border as a single group and not co-mingled with other cattle prior to arriving at the border and then may move within New Mexico without further restriction.

F. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have achieved accredited TB-free status and move directly into New Mexico without further testing or restriction provided they are moved as single group and not co-mingled with other cattle prior to arriving at the border.

G. Holstein and Holstein cross steers and Holstein and Holstein cross spayed heifers from Mexico are prohibited from entering New Mexico, regardless of test history.

H. Cattle entering from Mexico for the purpose of feeding and return to Mexico or slaughter, under the federal (United States) in-bond program, are exempt from the requirements above in ~~[21 NMAC 32.4.11.1 through 11.7]~~ [now] Subsections A through G of 21.32.4.11 NMAC.

I. Rodeo stock from Mexico shall be tested for tuberculosis by a United States accredited veterinarian or under the supervision of a USDA-APHIS port veterinarian, within twelve (12) months prior to their utilization as rodeo or roping stock and retested for tuberculosis every twelve (12) months thereafter.

J. The provisions of this section are intended solely for cattle born and raised in Mexico or within the United States or Canada and which were exported to Mexico, in accordance with appropriate rules and regulations.

[3/1/99; 21.32.4.11 NMAC - Rn, 21 NMAC 32.4.11, 12/31/2007; A, 10/30/2008]

NEW MEXICO LIVESTOCK BOARD

This is an amendment to the part name of 21.35.4 NMAC, and Sections 5 and 8. This action also renumbers and reformats 21 NMAC 35.4 "Livestock Markets" (01/28/1999) to conform to the current NMAC requirements and will be numbered and known as 21.35.4 NMAC, named "Livestock Markets and Facilities", effective 10/30/2008:

TITLE 21 AGRICULTURE AND RANCHING CHAPTER 35 LIVESTOCK MARKETING PART 4 ~~[LIVESTOCK MARKETS]~~ LIVESTOCK MARKETS AND FACILITIES

21.35.4.5 EFFECTIVE DATE:
March 1, 1999, unless a later date is cited at the end of a section ~~[or paragraph]~~.
[3/1/99; 21.35.4.5 NMAC - Rn & A, 21 NMAC 35.4.5, 10/30/2008]

21.35.4.8 LIVESTOCK MARKET LICENSE AND LICENSEE:

A. Any person desiring to operate a livestock market in New Mexico shall file an application for a license with the ~~[board]~~ director on such form or forms as the board shall prescribe, which application shall be signed by the applicant.

B. Every license issued by the ~~[board]~~ director to a livestock market operator shall expire one year from the date of issuance. Renewal of such license shall be made on renewal forms as prescribed by the board.

C. The ~~[board]~~ director may extend licenses for a portion of a calendar year, in order to synchronize the periods of all licenses, so that the one year period of issue coincides with the calendar year.

D. The license issued by the ~~[board]~~ director to any livestock market owner for the operation of a livestock market, shall specify the day or days of the week on which the sale or sales will be conducted at that market.

E. The board will cooperate with the United States department of agriculture, packers and stockyards administration, to insure that the livestock market owner has met the requirements for bonding and approval under the federal codes, prior to issuing the license.

F. Special sales may be held on days or dates not specified in said license upon written application being submitted to the ~~[executive]~~ director, at least fifteen days prior to the scheduled date of the special sale.

G. The market owner shall

display the license in a prominent place visible to the public.

H. Violation of any rule or statute on livestock market property by owner, agent, operator or employee may result in suspension or revocation of license.

[3/1/99; 21.35.4.8 NMAC - Rn & A, 21 NMAC 35.4.8, 10/30/2008]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.1 NMAC, Section 7, effective 11/15/08.

16.62.1.7 DEFINITIONS: The following rules and regulations are for the purpose of implementing the provisions of the New Mexico Real Estate Appraisers Act.

A. "Acceptable" appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, review appraisal, market analysis, real estate counseling/consulting, highest and best use analysis and feasibility analysis. All experience claimed after December 1, 1990, must be in conformance with applicable national uniform standards of professional appraisal practice (USPAP). Appraisal experience acceptable toward licensing or certification must have been gained under the supervision of an appraiser who is certified at a level equal to or greater than the license or certificate the applicant is seeking.

B. "Appraisers act" or "act" means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

C. "Complaint committee" shall be appointed by the board. The chairperson of the committee shall be an appraiser board member. The board appointed complaint committee is for the purpose of review of complaints and shall make recommendations to the board as to its findings. No real estate appraiser organization shall have a majority membership on the committee.

D. "Complex" means one to four family residential property appraisal one in which the property to be appraised, the form of ownership, or the market conditions are atypical (bank holding company supervision manual, 1999, page 10, section 2231.0.9.3).

E. "Content approval for distance education" non-academic credit college courses provided by a college shall be approved by the appraiser qualifications board (AQB) and the New Mexico real estate appraisers board.

F. "Direct supervision" means that a supervising appraiser is physically present to direct and oversee the production of each appraisal assignment.

G. "Duly made application" means an application to the New Mexico real estate appraisers board including paragraphs (1-7) set out below, in addition to any other requirements of the board:

(1) completed application on the form provided by the board; the form must be signed by the applicant attesting to the truthfulness of the information provided in the application;

(2) letters of verification from at least three individuals who are not related to the applicant but who are acquainted personally and professionally with him/her and who can attest that the applicant is of good moral character; and is competent;

(3) a statement attesting that he/she is a native, a naturalized citizen or a legal resident of the United States;

(4) transcripts or certificates or statements showing successful completion of the required appraisal courses;

(5) a recent photograph of the applicant in which the applicant clearly is discernible; the photograph must be at least two inches by three inches in size;

(6) a check or money order for the fees set out in 16.62.12.8 NMAC;

(7) an appraiser experience log recorded on the forms approved by the board or on another approved form, if required.

H. "Education advisory committee" shall be appointed by the board for the purpose of review of applications for course approval and sponsorship approval of appraiser educational offerings and shall make recommendations to the board as to its findings. Membership in a professional organization or association shall not be a prerequisite to serve on the committee. No real estate appraiser organization shall have a majority membership on the committee.

I. "Ethics provision" emphasizes the personal and professional obligations and responsibilities of the individual appraiser.

J. "Experience" is defined as verifiable time spent in performing tasks in accordance with the definition of "appraisal" and "appraisal assignment", as stated in the act, Section 61-30-3 NMSA 1978. Such tasks include inspecting and analyzing properties; assembling and analyzing relevant market data; forming objective opinions as to the value, quality or utility of such properties; and preparing reports or file memoranda showing data, reasoning and conclusions. Professional responsibility for the valuation function is essential for experience credit.

K. "Experience" will be submitted to the board in the form of a log,

which indicates assignment information and type, compensation status, time spent on the assignment and whether the applicant signed the report. Experience credit claimed on the log must be attested to by the supervising appraiser. Experience logs are subject to review and request for supporting documentation.

L. "Experience review process" is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable national uniform standards of professional appraisal practice (USPAP) standards.

M. "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

N. "Licensee" means an apprentice, license, residential certificate or general certificate.

O. "Location" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe, New Mexico

P. "Module" is an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum. All modules identified in the required core curriculum for a specific classification must be successfully completed to satisfy the educational requirements as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

Q. "Nonresident" for the purpose of 61-30-20 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current apprentice registration, license, or certificate, and is good standing, in another state.

R. "Practicing appraiser" means a state licensed or certified appraiser in good standing, engaged in performing appraisal assignments.

S. ~~["Principle place of business" means the location of head office of a business where the books and records are kept and management works.]~~ "Primary business location" means the geographical location of a business where the supervisor and trainee spend the majority of their time. A trainee may perform work only in areas where the supervising appraiser has competency in the geographical location and property type.

T. "Required core curriculum" is a set of appraisal subject matter (known as 'modules') which require a specified number of educational hours at each

credential level; as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

U. "Supervisor" means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last two (2) years that affects the supervisor's legal ~~[eligibility]~~ ability to engage in appraisal practice.

V. "The board" may reject any application for an apprentice license or certificate for:

(1) incomplete, inaccurate or fraudulent application;

(2) application not submitted on the proper board-approved form;

(3) failure to pay the fees in full in a form acceptable to the board.

W. "Trainee" means an individual who is being taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

X. "Uniform standards of professional appraisal practice" (USPAP) deal with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 11/15/08]

NEW MEXICO SECRETARY OF STATE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 23 PROCEDURES FOR RECOUNTS, AUDITS, RECHECKS AND CONTESTS

1.10.23.1 ISSUING AGENCY: Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.

[1.10.23.1 NMAC - N/E, 10-2-08]

1.10.23.2 SCOPE: This rule applies to recounts, rechecks, audits, and contests conducted pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

[1.10.23.2 NMAC - N/E, 10-2-08]

1.10.23.3 STATUTORY AUTHORITY: Election Code, Sections 1-2-1, and 1-14-1 *et seq.* NMSA 1978.

[1.10.23.3 NMAC - N/E, 10-2-08]

1.10.23.4 DURATION: Permanent.

[1.10.23.4 NMAC - N/E, 10-2-08]

1.10.23.5 EFFECTIVE DATE:

October 2, 2008, unless a later date is cited at the end of a section.

[1.10.23.5 NMAC - N/E, 10-2-08]

1.10.23.6 OBJECTIVE: The purposes of this rule is to provide procedures for conducting audits, contests, recounts, and recounts pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

[1.10.23.6 NMAC - N/E, 10-2-08]

1.10.23.7 DEFINITIONS:

A. Abbreviated name means shortened given or surname including, but not limited to, 'Pat' for Patrick, Patricio, or Patricia, 'Wm' or 'Bill' for William, 'Rick' for Ricardo or Richard, 'Mtz' for Martinez.

B. Absentee ballot means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

C. Absent voter precinct board means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

D. Absentee provisional ballot means the paper ballot issued to a provisional absentee voter.

E. Audit means a check of the voting systems conducted pursuant to Section 1-14-13.1 NMSA 1978.

F. Ballot means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

G. Contest means court litigation that seeks to overturn the outcome of an election pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

H. County canvassing board means the board of county commissioners in each county.

I. Designated polling place means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

J. High speed central count marksense ballot tabulator means a self-contained optical scan vote tabulating system that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

K. In-lieu of absentee ballot means a ballot provided to a voter at his designated polling place when the absentee ballot was not received by the voter before election day.

L. Observer means a voter of a county who has been appointed by a candidate, political party chair, or election related organization pursuant to the provisions of the Election Code.

M. Optical scan or marksense ballot means a ballot used on an optical scan vote tabulating system or EVT marksense voting system.

N. Optical scan vote tabulating system or electronic vote tabulating (EVT) marksense voting system means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot imprinted on either or both faces with text and voting response areas, and includes a high-speed central count marksense ballot tabulator. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response areas.

O. Overvote means the selection by a voter of more than the number of alternatives allowed in a voting response area.

P. Provisional absentee voter means a voter who votes on an absentee provisional ballot after initially attempting to vote by absentee ballot but whose name does not appear on the signature roster or has failed to meet the voter identification requirements in the Election Code.

Q. Provisional ballot means a ballot that is marked by a provisional voter.

R. Provisional voter means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

S. Recheck shall have the meaning given in Subsection A of Section 1-1-6 NMSA 1978.

T. Recount shall have the meaning given in Subsection B of Section 1-1-6 NMSA 1978 and shall include hand recounts conducted pursuant to this part.

U. Signature roster means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

V. Tally sheet means a document prepared by the county clerk and used for the counting of ballots.

W. Undervote means the failure of a voter to select any of the alternatives in a voting response area.

X. Vote shall have the meaning given in Subsection A and Paragraphs (1) through (3) of Subsection B of Section 1-9-4.2 NMSA 1978.

Y. Voter means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

Z. Voting response area means the place on a ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.23.7 NMAC - N/E, 10-2-08]

1.10.23.8 PUBLIC NOTICE AND OBSERVATION OF AUDITS, RECHECKS AND RECOUNTS:

A. Public notice. In addition to the notice required to be provided by Section 1-14-16 NMSA 1978 for rechecks and recounts, at least three (3) days prior to an audit, recount or recheck, the county clerk shall post, in at least one conspicuous place in the county, the time and location of the audit, recount or recheck. In addition, if the county clerk has a web site, at least three (3) days prior to an audit, recount or recheck, the county clerk shall post the time and location of the audit, recount or recheck on its web site.

B. Public observation. Consistent with Subsection A of Section 1-14-13.1 NMSA 1978, county canvass observers may be present during the audit process and shall be subject to Section 1-2-31 NMSA 1978. Pursuant to Section 1-14-16 NMSA 1978, members of the public may be present during a recheck or recount. The county clerk shall provide instructions to all observers, watchers and members of the public regarding any rules governing their conduct during an audit, recheck, or recount. At all times during an audit, recheck, or recount, those present to observe shall wear self-made badges designating themselves as an authorized observer of the organization or candidate which they represent or as a member of the public. Those present to observe an audit, recheck, or recount shall not:

- (1) wear any identification other than the badge described above;
- (2) wear any party or candidate pins;
- (3) perform any duty of the recount, recheck, or audit workers;
- (4) handle any election material;
- (5) interfere with the orderly conduct of workers conducting the process; or
- (6) use cell phones, audio, or video tape equipment while observing the process.

[1.10.23.8 NMAC - N/E, 10-2-08]

1.10.23.9 "TWO PERCENT" AUDIT PROCEDURES: This section applies to audits of gubernatorial and presidential races in a general election, as required by Section 1-14-13.1 NMSA 1978.

A. Simple random sampling of voting systems required for audit. In selecting the voting systems to be used in an audit, the secretary of state shall obtain a random sample of two percent (2%) of voting systems from each county in accordance with the procedures in this subsection.

(1) By no later than 1:00 P.M. on the Monday immediately following election day, the secretary of state shall select the

voting systems to be audited. The serial number of each voting system used prior to or on election day shall be placed on a separate piece of paper and the papers with the serial numbers shall be placed in a separate container for each county. The secretary of state shall pull voting system numbers at random from each container until two percent (2%) of voting systems from each county are drawn. If two percent (2%) of all voting systems in a county is less than one voting system, the secretary of state shall draw one voting system for that county.

(2) By no later than 1:00 P.M. on the Tuesday immediately following election day, the secretary of state shall notify the county clerks of the serial numbers of the voting systems that have been selected for auditing.

(3) The random sampling process shall be open to public observation. At least seven (7) days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

B. Time and place; ballot security.

(1) The county clerk shall choose a location for the audit that is accessible to the public.

(2) The county clerk shall arrange for transportation of ballots to the audit site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the audit site.

(3) Prior to conducting the audit, the county clerk shall seek an order from the district judge permitting the county clerk to open those ballot boxes containing ballots from the voting systems selected for auditing.

(4) The county clerk shall assign counting teams of at least two members to particular voting systems. The team shall consist of one reader and one marker, not of the same political party whenever feasible.

(5) At least one person in addition to the county clerk shall witness all movement of ballots during the audit, and all movement of ballots from and to the ballot box during the audit process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

C. Hand counting procedures for audits. The ballots from the voting systems selected for auditing shall be hand tallied pursuant to the procedures in this subsection. The secretary of state shall provide tally sheets for only those races being tallied as part of the audit, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet.

(2) To count the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a voting system or portion of a voting system, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate, or both. In no case, shall the counting team mark or re-mark the ballot.

D. Audit reconciliation procedures.

(1) Immediately upon the conclusion of the audit, the county clerk shall compare the results of the machine count with the results of the hand tally, provide the results to the secretary of state in writing, and make the results available to the public. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(2) The secretary of state shall determine whether a recount is required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978, and within five (5) days of the completion of the state canvass, file notice with the appropriate canvassing board(s) that a recount is required. In the notice, the secretary of state shall specify the office and precincts that shall be recounted. When a recount is required by Section 1-14-13.1 NMSA 1978, a recount shall be made in all precincts of the legislative district in which the discrepancy occurred.

(3) All recounts required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978 shall be conducted pursuant to 1.10.23.10 NMAC.
[1.10.23.9 NMAC - N/E, 10-2-08]

1.10.23.10 RECOUNT AND RECHECK PROCEDURES: This section applies to rechecks and recounts conducted pursuant to Sections 1-14-14 and 1-14-24 NMSA 1978, and recounts resulting from audits performed under Section 1-14-13.1 NMSA 1978. Except as otherwise provided in Subsection E of Section 1-14-23

NMSA 1978 and this section, the recheck and recount procedures in this section shall be used in conjunction with the procedures in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978.

A. Time and place; ballot security.

(1) Pursuant to Subsection A of Section 1-14-16 NMSA 1978, the recount or recheck shall be held at the county courthouse.

(2) The county clerk shall arrange for transportation of ballots to the recount or recheck site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the recount or recheck site.

(3) The county clerk shall convene the absent voter precinct board no more than ten (10) days after the filing of the application for a recount or recheck, notice of an automatic recount, or notice of a recount required by Subsection B of Section 1-14-13.1 NMSA 1978.

(4) The presiding judge of the absent voter precinct board shall assign counting teams of at least two members, of opposite political parties if possible, to particular precincts.

(5) At least one person in addition to the district judge or presiding judge shall witness all movement of ballots during the recount, and all movement of ballots from and to the ballot box during the recount process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

B. Random selection of ballots to determine whether the recount shall be hand tallied or electronically tabulated. This subsection does not apply to recounts resulting from audits performed under Section 1-14-13.1 NMSA 1978. To determine whether votes shall be recounted using optical scan vote tabulating systems pursuant to Section 1-14-23 NMSA 1978, the absent voter precinct board shall electronically tabulate absentee ballots from the precincts to be recounted in accordance with the procedures in this subsection.

(1) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into an M-100 optical scan vote tabulating system. A summary zeros results report shall be generated and certified by the precinct board.

(2) Absentee ballots equal to at least the number required by Subsection B of Section 1-14-23 NMSA 1978 shall be fed into the optical scan vote tabulating system. Any absentee ballots rejected by the optical scan vote tabulating system shall be placed

back into the ballot boxes and additional absentee ballots shall be inserted until the number of ballots tabulated by the system is equal to at least the amount required by Subsection B of Section 1-14-23 NMSA 1978. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedure in Paragraph (1) of this subsection shall be repeated for each precinct being tabulated.

(3) The absent voter precinct board shall then hand tally the votes from the same ballots counted by the optical scan vote tabulating system in accordance with the procedures in Subsection E of this section.

(4) Pursuant to Subsection C of 1-14-23 NMSA 1978, for statewide or federal offices, if the results of the hand-tally and the electronic vote tabulating system differ by one-fourth of one percent or less, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

(5) Pursuant to Subsection D of 1-14-23 NMSA 1978, for offices other than statewide or federal offices, if the results of the hand-tally and the optical scan vote tabulating system differ by the greater of one percent or less, or two votes, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

C. Electronic recount procedures.

(1) **Class A counties.** If the remaining ballots in a class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use an M-650 optical scan vote tabulating system in accordance with the procedures in this paragraph, provided that the M-650 optical scan vote tabulating system was not used to tabulate voted absentee, early-in person or election day ballots. If the M-650 optical scan vote tabulating system was used to tabulate voted ballots, the absent voter precinct board shall use M-100 optical scan vote tabulating systems in accordance with the procedures in Paragraph (2) of this subsection.

(a) To recount the ballots for a particular ballot type (e.g., absentee ballots, election day ballots, early in-person ballots), a results cartridge programmed with ballot configurations for all precincts to be recounted in the county shall be inserted into the optical scan vote tabulating system. A summary zeros report shall be generated

and certified by the absent voter precinct board.

(b) The ballots for the ballot type being recounted shall be inserted into the optical vote tabulating system.

(c) The votes from any ballots rejected by the system shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(d) A machine report shall be generated for each precinct after ballots are tabulated for that precinct, and the machine results shall be zeroed out. The ballots for the next precinct shall be tabulated until all ballots for the ballot type being recounted are tabulated.

(e) The procedures in this paragraph shall be repeated for each ballot type being recounted.

(2) **Non-class A counties.** If the remaining ballots in a non-class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use M-100 optical scan vote tabulating systems selected at random by the county clerk in accordance with the procedures in this paragraph.

(a) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into the optical scan vote tabulating system chosen by the county clerk.

(b) A summary zeros report shall be generated and certified by the precinct board.

(c) The ballots for the ballot type (e.g., absentee ballots, election day ballots, early in-person ballots) and precincts to be recounted shall be fed into the optical scan vote tabulating system.

(d) All ballots rejected by the tabulator shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(e) A machine report shall be generated and certified by the absent voter precinct board.

(f) If the absent voter precinct board uses a results cartridge programmed with ballot configurations for all precincts in the county, then the procedures in this paragraph shall be repeated for each ballot type being recounted. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedures in this paragraph shall be repeated for each precinct being tabulated.

(3) If the voted ballots in a precinct are unavailable or incomplete for recount, the district judge, in consultation with the county clerk, may order that a results tape or report be regenerated from the results cartridge that was used to tabu-

late the voted ballots.

D. Review of rejected ballots and re-tally of provisional, in-lieu of absentee ballots and other paper ballots in a recount.

(1) The district judge shall orally order that any ballot boxes, envelopes, or containers that hold provisional, in-lieu of absentee, and absentee provisional ballots be opened one at a time.

(2) The presiding judge shall count the total number of provisional, absentee provisional, and in-lieu of absentee ballots in each precinct and the number shall be compared to the previously certified signature roster count in that precinct and noted. Any discrepancies shall be noted.

(3) The county clerk shall review the qualification of all rejected provisional, absentee provisional, and in-lieu of absentee ballots pursuant to Section 1-12-25.4 NMSA 1978 and 1.10.22 NMAC.

(4) The absent voter precinct board shall review the qualification of all rejected absentee ballots in accordance with 1.10.12.15 NMAC and any other rejected ballots in accordance with applicable law.

(5) All previously and newly qualified ballots (including provisional, absentee provisional, in-lieu of absentee ballots, absentee ballots and other paper ballots) shall be recounted and the votes shall be added to the tally of the appropriate precinct.

(6) If any voting data changes as a result of this review, the county clerk shall update the report required in Subsection I of 1.10.22.9 NMAC.

E. Hand counting procedures for recounts. This subsection applies to hand recounts. The secretary of state shall provide tally sheets for only those races being recounted, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the precinct and the ballot type (e.g., election day, early in-person, absentee, in-lieu of absentee, and provisional) being counted are prominently displayed on the tally sheet.

(2) To recount the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate, or both. In no case, shall the counting team mark or re-mark the ballot.

F. Recount and recheck reconciliation procedures.

(1) Upon completion of a recount, the district judge or presiding judge shall tabulate the total vote count from the machine generated tapes or reports and the tally sheets from the hand recount.

(2) The county clerk or secretary of state in a statewide race shall compare the results of each recount or recheck to the results of the county or statewide canvass. County clerks shall make available to the public and provide to the secretary of state the results of the recount or recheck within five (5) days of the completion of the recount or recheck. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(3) Pursuant to Subsection A of Section 1-14-18 NMSA 1978, the absent voter precinct board shall send the certificate of recount or recheck executed pursuant to Subsection D of Section 1-14-16 NMSA 1978 to the proper canvassing board.

(4) In the event of a recount or recheck conducted pursuant to Section 1-14-14 NMSA 1978, if no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978.

[1.10.23.10 NMAC - Rn & A/E, 1.10.22.11 & 12 NMAC, 10-2-08]

1.10.23.11 CONTEST PROCEDURES:

A. An election contest shall be conducted pursuant to the provisions of the Election Code under Sections 1-14-1 *et seq.* NMSA 1978.

B. In any election contest the court may order the re-tallying of ballots. The county clerk shall provide tally sheets for the purpose of the contest.

C. In any election contest the court may order comparison of results cartridges from any optical scan vote tabulating systems.

D. No rejected ballot subject to review in an election contest shall be disqualified solely because the signature on the outer envelope or affidavit contains an abbreviated name, lack of a middle initial, or lack of a suffix, provided that the voter can be identified with information provided

on the outer envelope or voter's affidavit.

E. If a tally of qualified provisional or other ballots is required in an election contest, the court may summon the county clerk to re-tally all qualified provisional or other ballots and review all rejected provisional or other ballots pursuant to Subsection D of 1.10.23.10 NMAC.

[1.10.23.11 NMAC - Rn & A/E, 1.10.22.13 NMAC, 10-2-08]

HISTORY OF 1.10.23 NMAC:

Pre-NMAC History: None

History of Repealed Material:

1.10.22 NMAC, Provisional Voting Security, filed 8-1-2003 - Repealed effective 4-28-2006.

NMAC History:

1.10.22 NMAC, Provisional Voting, Recounting and Security, filed 4-17-2006.

1.10.23 NMAC, Procedures for Recounts, Audits, Recounts and Contests, filed 8-2-2008, replaces those portions of 1.10.22 NMAC, Provisional Voting, effective 8-2-2008.

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.22 NMAC, Sections 3, 6, 7, 9, 11, 12, and 13, effective October 2, 2008. Sections 11 through 13 have been stricken in their entirety, and amended versions have been placed in the newly promulgated 1.10.23 NMAC. This also amends the part name.

PART 22 PROVISIONAL VOTING [~~RECOUNTING AND SECURITY~~]

1.10.22.3 STATUTORY

AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Chapter 356, Laws 2003, Public Law 107-252, The Help America Vote Act of 2002; Chapter 270, Laws 2005. The issuing authority shall issue rules to ensure securing the secrecy of the provisional ballot and protect against fraud in the voting process, create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, and ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting [~~and govern and allow procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest, recount, or recheck of election results~~].

[1.10.22.3 NMAC - Rp, 1.10.22.3 NMAC, 4-28-06; A/E, 10-2-08]

1.10.22.6 OBJECTIVE: The

Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional ballot. The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process. Chapter 270, Laws 2005 amended the Election Code to require a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, and to ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting [~~and to govern and allow procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest, recount, or recheck of election results~~].

[1.10.22.6 NMAC - Rp, 1.10.22.6 NMAC, 4-28-06; A/E, 10-2-08]

1.10.22.7 DEFINITIONS:

A. "Abbreviated address" means a voter using initials to designate a city within New Mexico and includes, but is not limited to, "LC" for Las Cruces, "SF" for Santa Fe, or "ABQ" for Albuquerque.

B. "Abbreviated name" means shortened given or surname including, but not limited to, 'Pat' for Patrick, Patricio, or Patricia, 'Wm' or 'Bill' for William, 'Rick' for Ricardo or Richard, 'Mtz' for Martinez.

C. "Absentee ballot" means a [~~paper ballot card cast by a voter other than at an alternate location or regular~~] method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

D. "Absentee ballot register" means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

E. "Absentee precinct board" means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

F. "Absentee provisional ballot" means the paper ballot card issued to an absent provisional voter.

G. "Alternate location" means a site outside the office of the coun-

ty clerk, established by the county clerk, where a voter may cast a ballot seventeen (17) days prior to an election and includes mobile alternate voting locations.

H. "Alternative voter" means a voter, who, after the deadline for requesting an absentee ballot and due to unforeseen illness or disability, resulting in confinement to a hospital, sanatorium, nursing home or residence, is unable to vote at his precinct polling place.

I. "Ballot" means a paper ballot card that is used on an optical scan vote tabulating machine or hand tallied or the electronic image on a direct recording electronic voting system that presents a sequence of contests, ballot measures or both.

J. "Challenger" means a voter in that county to which he is appointed under the provisions of the Election Code.

K. "Contest" means court litigation that seeks to overturn the outcome of an election pursuant to Section 1-14-1 NMSA 1978.

L. "County canvassing board" means the board of county commissioners in each county.

M. "Designated polling place" means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

N. "Direct recording electronic (DRE) voting system" means a voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records by in internal and external memory components. It produces a tabulation of the voting data stored in a removable memory component ~~and/or~~ or in printed copy.

O. "Early voter" means a voter who votes in person before election day and not by mail.

P. "Election" means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections.

Q. "Electronic vote tabulating (EVT) marksense voting system" or "optical scan vote tabulating system" means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

R. "Emergency paper

ballot" means the paper ballot card used in a polling place on election day when a voting system is disabled, cannot be repaired in a reasonable length of time and when no other voting system is available to the voter.

S. "Federal ballot" means a paper ballot card that contains only federal candidates or questions.

T. "High speed central count marksense ballot tabulator" means a self-contained optical scan ballot tabulator that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

U. "Marksense or optical scan ballot" means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high-speed central count marksense vote tabulator.

V. "In-lieu of absentee ballot" means a paper ballot card provided to a voter at his polling place when the absentee ballot was not received by the voter before election day.

W. "Naked ballot" means an absentee ballot, provisional ballot, alternate ballot, replacement absentee ballot or in-lieu of absentee ballot that has not been placed in the inner secrecy envelope by the voter.

X. "Observer" means a voter of a county who has been appointed by a candidate, political party chair or election related organization pursuant to the provisions of the Election Code.

Y. "Overvoted ballot" means a paper ballot card on which the voter has selected more than the number of alternatives allowed in a contest or on a question.

Z. "Precinct board" means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate location.

AA. "Presidential ballot" means a paper ballot card containing only names of candidates for United States president.

BB. "Provisional absentee voter" means a voter who votes on a provisional absentee ballot after initially attempting to vote by absentee ballot but whose name does not appear on the roster or has failed to meet the voter identification requirements, pursuant to the provisions of the Election Code.

CC. "Provisional ballot" means a marksense or optical scan paper ballot card that is marked by a provisional voter.

DD. "Provisional ballot tally sheet" means a document prepared

and used by the county clerk for the counting of votes cast by qualified provisional voters for candidates and questions.

EE. "Provisional ballot transmission envelope" means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

FF. "Provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

~~**GG. "Recheck"** means a verification procedure where a printout of the electronic record of votes cast in an election is made from each electronic memory device in the electronic voting system and the results are compared with the results shown on the official returns pursuant to Section 1-1-6 NMSA 1978.~~

~~**HH. "Recount"** means a verification procedure whereby the voter's selections on a paper ballot card may be counted by hand and the results compared with the results shown on the official returns pursuant to Section 1-1-6 NMSA 1978.]~~

~~**II. GG. "Replacement absentee ballot"** means a paper ballot card issued by the county clerk prior to 5:00 p.m. on the Monday immediately preceding the date of the election to a voter who has applied for but not received an absentee ballot.~~

~~**JJ. HH. "Signature roster"** means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.~~

~~**KK. II. "Tally sheet"** means a document prepared by the county clerk and used for the counting of provisional ballots, hand tallied absentee ballots, in-lieu of absentee ballots and emergency paper ballots.~~

~~**LL. JJ. "Verification process"** means the reviewing process used by a county clerk to determine the eligibility of a provisional or in-lieu of absentee voter.~~

~~**MM. KK. "Voter"** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.~~

~~**NN. LL. "Voting response area"** means the place on a paper ballot card where the voter is instructed to mark his preference for a candidate or question.~~

~~[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, 4-28-06; A/E, 10-2-08]~~

1.10.22.9 COUNTY CLERK PROCEDURES:

A. The provisional ballot

outer envelope containing the voter's oath shall not be opened until the county clerk has determined the reason the provisional voter's name was not on the signature roster, or whether the voter has provided identification, if required, by the Election Code. The county clerk shall place any naked ballot in an individual manila envelope to replace the inner secrecy envelope and mark the voter's correct voting precinct on that envelope.

B. The county clerk has the authority to determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter's address on the affidavit does not match the voter's address on the voter's certificate of registration, provided the county clerk can identify the voter with other information provided on the affidavit.

C. The county clerk shall determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter has used an abbreviated name, address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit.

D. The county clerk shall determine the qualification of a provisional ballot but shall not disqualify any provisional ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with information provided on the outer envelope of the paper ballot or affidavit.

E. A provisional ballot shall be qualified if both:

(1) the voter has provided all the information under Section 1-12-25.3 and Section 1-12-25.4 NMSA 1978, provided that a voter shall not have his vote disqualified under Subsections B, C or D of this section, and

(2) if the county clerk can determine the voter is a registered voter in the county; if a voter is registered in county, but cast a provisional ballot at the wrong polling place, the county clerk shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted; if there is a conflict between New Mexico statute and this statewide standard, the statute will control.

F. A provisional ballot shall be rejected if: (a) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA 1978 subject to the provision in Subsections B, C or D of this section; (b) the clerk cannot determine

the voter is a registered voter in the county; (c) the voter has voted outside his county of registration; (d) voter has voted an absentee ballot in the election; (e) voter's registration was properly cancelled; or (f) voter failed to meet the voter identification requirements. If there is a conflict between New Mexico statute and this statewide standard, the statute will control.

G. A county canvass observer, pursuant to Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification process and canvass. At all times while observing the process and canvass, the observer shall wear self-made badges designating them as authorized observers of the organizations which they represent. They shall not wear any other form of identification, party or candidate pins. The observer shall not: (a) perform any duty of the workers; (b) handle any material; (c) interfere with the orderly conduct of workers conducting the process; and (d) use cell phones, audio or video tape equipment while observing the process. The provisional ballot qualification process shall be run with the county clerk staff member reading aloud the name and address of the provisional ballot. A county canvass observer may interpose a challenge to the qualification of the voter consistent with Subsections A - E of Section 1-12-20 NMSA 1978. The county clerk staff member shall handle the challenge consistent with Section 1-12-22 NMSA 1978. The county clerk staff member will then announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk shall assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot from outer envelope for the tallying process. The observer may preserve for future reference written memorandum of any action and may raise it at the canvass meeting. Observers shall not be in the line of sight or view or make notes of the voter's personal information: date of birth, party affiliation, and social security number.

H. The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope marked "unqualified provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked "qualified provisional ballot outer envelopes" and retained for twenty-

two (22) months, pursuant to 42 USC 1974. The county clerk shall mark the number of the voter's correct precinct on the inner secrecy envelope and ballot for the purposes of a recount or contest, but no other information indicating the identity of the voter shall be furnished to the county canvassing board or any other person. After the tally of qualified provisional ballots, the county clerk shall deposit the counted provisional ballots in an envelope marked "counted provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1972.

I. The county canvassing board shall direct the county clerk to prepare a tally of qualified provisional ballots, in-lieu of absentee ballots and absentee provisional ballots and include them in the canvass presented to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct. Provisional ballots, in-lieu of absentee ballots and absentee provisional ballots shall be tallied on separate tally sheets. The county clerk shall process provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location. The tally sheet may be a photocopy of a precinct tally sheet, however it shall be clearly marked as designated for provisional ballots, in-lieu of absentee ballots or provisional absentee ballots. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional ballots cast within the county. The report shall contain the name, address [~~date of birth and social security number~~] and correct precinct number of each provisional voter, in-lieu of absentee ballot voter or provisional absentee ballot voter. The report shall be transmitted to the secretary of state within 10 days of the election. Pursuant to the Help America Vote Act, information about access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot. The report shall include an explanation why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot, in-lieu of absentee voter's ballot or provisional absentee voter's ballot was not counted. The report shall be in alphabetical order [~~and shall include the social security number and date of birth for each voter~~].

J. Counting procedures for provisional ballots. The county clerk shall count the qualified provisional ballots using the hand tally method. One team of at least two persons shall be used to count each qualified provisional ballot. The team shall consist of one reader and one marker.

not of the same political party whenever feasible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read the ballot; the marker shall then mark the tally sheet of the precinct where the vote was cast, and the reader shall observe whether the marker correctly marked the tally sheet.

K. Votes to be counted.

When counting provisional ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote. If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate or both. In no case, shall the counting team mark or re-mark the ballot.

[J.] L. The county clerk shall establish a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted, and, if the vote was not counted, the reason it was not counted. Access to this system is restricted to the voter who cast the ballot.

[K.] M. The county clerk may designate emergency paper ballots for use as provisional ballots.

[L.] N. The county clerk shall notify by certified mail each voter whose provisional ballots was not counted of the reason the ballot was not counted. The clerk shall send out this notification any time between the closing of the polls on election day through the tenth calendar day following the election. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal this decision to the county clerk.

[M.] O. The appeal process pursuant to Subsection C of Section 1-12-25.2 NMSA 1978 shall be conducted as follows:

(1) the county clerk shall select a hearing officer(s) from staff or a person from the community who is not affiliated with any candidate on the ballot and knowledgeable of election law and the clerk shall provide a disability accessible room for the hearing officer to work;

(2) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;

(3) the voter may appear with counsel;

(4) the appeal hearing shall be an open meeting, but the voter's personal information:

(a) date of birth;

(b) party affiliation, and

(c) social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;

(5) county clerk staff and the public may make brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;

(6) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision or send by certified mail a letter decision to the voter;

(7) there is no statutory right of appeal;

(8) all decisions shall cite a provision of the Election Code explaining the disposition and be announced or mailed by the Monday before the state canvassing board meeting;

(9) if the voter prevails, the hearing officer shall direct the county clerk staff to handle the ballot as a qualified provisional ballot as found above; and

(10) the county clerk shall notify the county canvassing board of the completion and results of the appeals process. [1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, 4-28-06; A/E, 10-2-08]

1.10.22.11 [RECOUNT PROCEDURES FOR STATE CANVASSING BOARD:]

A. A recount shall be conducted pursuant to the provisions of the Election Code.

B. If an application is received and payment is made pursuant to law, the county clerk shall coordinate with district judge and the secretary of state on recount date.

C. The county clerk shall receive summons from the secretary of state pursuant to Subsection A of Section 1-14-16 NMSA 1978.

D. Precinct board shall be responsible for recounting all paper ballots. The county clerk shall provide tally sheets for the purpose of the recount.

E. The county clerk deliver summons "recount workers", including absentee precinct board members (for absentee and in-lieu ballots), early absentee precinct board (for early absentee ballots if board is different from absentee precinct board, county clerk (for qualified provisional and rejected provisional ballots), and any precinct board members whose precincts used paper ballots.

F. The county clerk must send notice to district judge and county chairman of each political party pursuant to Subsection B of Section 1-14-16 NMSA 1978.

G. The election workers must meet at county courthouse at 10 a.m. on designated date pursuant to Subsection C of Section 1-14-16 NMSA 1978.

H. The county clerk must arrange for transportation of ballots to recount site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the county courthouse.

I. At the site of the courthouse, the district court judge will verbally order the boxes to be opened. The district court judge will instruct the recount workers on what constitutes the statewide standard on a vote as stated in Section 1-9-4.2 NMSA 1978 and Subsection C of 1-10-12.5 NMAC. The district court judge will instruct the recount workers on what constitutes the statewide standard on qualified provisional ballot pursuant to 1-10-22.9 NMAC.

J. The process is open to public observers, but not to public comment.

K. Once the boxes are opened, presiding judge of the relevant precinct board shall locate the ballots that have the ballot combination for that precinct.

L. The district court judge will order the ballots to be fed into the tabulator.

M. Any rejected ballots rejected by the tabulator should be handled by the precinct board.

N. The county clerk shall re-tally all qualified provisional ballots and review all rejected provisional ballots.

O. No rejected ballot shall be disqualified solely because the signature on the outer envelope or affidavit contains an abbreviated name, lack of a middle initial, or lack of suffix, provided that the voter can be identified with information provided on the outer envelope or voter's affidavit.

P. The results of the recount shall be compared to the results of the county canvass.

Q. In any recount procedure, the court may order comparison of audit tapes and tabulator voting system.

R. After completion of recount, the precinct boards and clerks shall replace the paper ballots in the ballot boxes and lock them pursuant to Subsection E of Section 1-14-16 NMSA 1978.

S. The precinct board shall execute a certificate of recount pursuant to Subsection E of Section 1-14-16 NMSA 1978.

T. The district court judge and county clerk shall certify the recount was made in their presence pursuant to Subsection E of Section 1-14-16 NMSA 1978.

~~U. The county clerk shall execute a certificate of recount and send a certificate of recount to the state canvassing board pursuant to Subsection A of Section 1-14-18 NMSA 1978.~~

~~V. The state canvassing board shall meet and adopt the certificate of recount pursuant to Subsection B of Section 1-14-18 NMSA 1978.~~

~~W. If no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978.]~~
[RESERVED]

[1.10.22.11 NMAC - N, 4-28-06; A/E, 10-2-08]

1.10.22.12 [RECOUNT PROCEDURES FOR STATE CANVASSING BOARD RACES:

~~A. A voting system reccheck shall be conducted pursuant to the provisions of the Election Code.~~

~~B. A reccheck shall follow the same procedure as listed in 1.10.22.11 NMAC, except as it applies to Subsection A of Section 1-1-6 NMSA 1978 where recount workers printout the electronic record of votes from each electronic memory device and compare the results against the official results. The recount workers shall not include the hand tallying procedures for paper ballots in a reccheck.]~~ [RESERVED]
[1.10.22.12 NMAC - N, 4-28-06; A/E, 10-2-08]

1.10.22.13 [CONTEST PROCEDURES FOR STATE CANVASSING BOARD RACES:

~~A. An election contest shall be conducted pursuant to the provisions of the Election Code under Section 1-14-1 NMSA 1978.~~

~~B. In any election contest the court may order the re-tallying of absentee ballots, absentee provisional ballots, alternative ballots, emergency paper ballots, in lieu of absentee ballots, provisional ballots, replacement absentee ballots, presidential ballots and federal ballots. The county clerk shall provide tally sheets for the purpose of the contest.~~

~~C. In any election contest the court may order comparison of audit tapes or ballot image retention tapes from any direct recording electronic tabulator voting system.~~

~~D. No rejected ballot, subject to review in an election contest shall be disqualified solely because the signature on the outer envelope or affidavit contains an abbreviated name, lack of a middle initial, or lack of a suffix, provided that the voter can be identified with information provided~~

~~on the outer envelope or voter's affidavit.~~

~~E. If a tally of qualified provisional ballots is required in an election contest, the court may summon the county clerk to re-tally all qualified provisional ballots and review all rejected provisional ballots.]~~ [RESERVED]

[1.10.22.13 NMAC - N, 4-28-06; A/E, 10-2-08]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.23 NMAC, Section 9, effective October 16, 2008.

1.10.23.9 "TWO PERCENT" AUDIT PROCEDURES: This section applies to audits of gubernatorial and presidential races in a general election, as required by Section 1-14-13.1 NMSA 1978.

A. Simple random sampling of voting systems required for audit. In selecting the voting systems to be used in an audit, the secretary of state shall obtain a random sample of two percent (2%) of voting systems from each county in accordance with the procedures in this subsection.

(1) By no later than 1:00 P.M. on the Monday immediately following election day, the secretary of state shall select the voting systems to be audited. The serial number of each voting system used prior to or on election day shall be placed on a separate piece of paper and the papers with the serial numbers shall be placed in a separate container for each county. The secretary of state shall pull voting system numbers at random from each container until two percent (2%) of voting systems from each county are drawn. If two percent (2%) of all voting systems in a county is less than one voting system, the secretary of state shall draw one voting system for that county.

(2) By no later than 1:00 P.M. on the Tuesday immediately following election day, the secretary of state shall notify the county clerks of the serial numbers of the voting systems that have been selected for auditing.

(3) The random sampling process shall be open to public observation. At least seven (7) days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

B. Time and place; ballot security.

(1) The county clerk shall choose a location for the audit that is accessible to the public.

(2) The county clerk shall arrange for transportation of ballots to the audit site

and contact the sheriff or state police to move the ballot boxes from the current place of storage to the audit site.

(3) Prior to conducting the audit, the county clerk shall seek an order from the district judge permitting the county clerk to open those ballot boxes containing ballots from the voting systems selected for auditing.

(4) The county clerk shall assign counting teams of at least two members to particular voting systems. The team shall consist of one reader and one marker, not of the same political party whenever feasible.

(5) At least one person in addition to the county clerk shall witness all movement of ballots during the audit, and all movement of ballots from and to the ballot box during the audit process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

C. Hand counting procedures for audits. The ballots from the voting systems selected for auditing shall be hand tallied pursuant to the procedures in this subsection. The secretary of state shall provide tally sheets for only those races being tallied as part of the audit, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet.

(2) To count the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a voting system or portion of a voting system, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

~~[(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate, or both. In no case, shall the counting team mark or re-mark the ballot.]~~

D. Audit reconciliation procedures.

(1) Immediately upon the conclusion of the audit, the county clerk shall compare the results of the machine count

with the results of the hand tally, provide the results to the secretary of state in writing, and make the results available to the public. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(2) The secretary of state shall determine whether a recount is required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978, and within five (5) days of the completion of the state canvass, file notice with the appropriate canvassing board(s) that a recount is required. In the notice, the secretary of state shall specify the office and precincts that shall be recounted. When a recount is required by Section 1-14-13.1 NMSA 1978, a recount shall be made in all precincts of the legislative district in which the discrepancy occurred.

(3) All recounts required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978 shall be conducted pursuant to 1.10.23.10 NMAC.

[1.10.23.9 NMAC - N/E, 10-2-08; A/E, 10-16-08]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

New Mexico Department of Game and Fish Office is announcing the opening of a third public comment period on the 2008 Biennial Review, as directed by the Game Commission on October 2, 2008. The Commission recommended entertaining additional public comments on the 2008 Biennial Review, particularly regarding loach minnow which warrants uplisting. In addition, initial director recommendations are to uplist gray redhorse and to down list (desert) bighorn sheep. Comments regarding the biological and ecological evidence and the economic impacts, pertaining to the director's recommendations on the 2008 Biennial Review may be submitted and will be included in the public repository established under the Wildlife Conservation Act. **Written comments** pertaining to the biological and ecological evidence **will be accepted from October 3 - November 3, 2008. Only written comments will be included in the public repository.** To obtain a copy of the report or to submit comments for inclusion in the public repository please contact Renae Held, P.O. Box 25112, Santa Fe, NM 87505, phone (505) 476-8101, fax (505) 476-8128, renae.held@state.nm.us

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

Volume XIX	Submittal Deadline	Publication Date
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

2009

Volume XX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
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 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
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