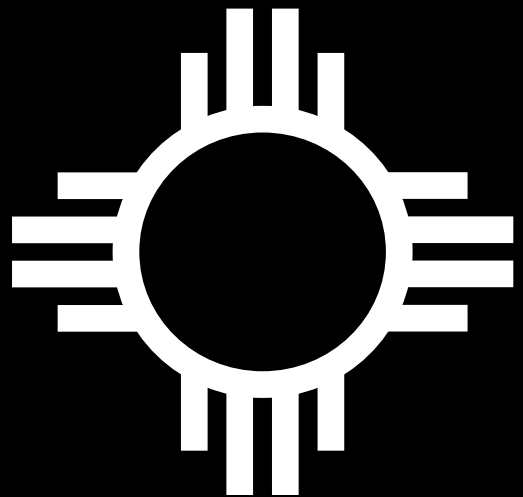


**NEW  
MEXICO  
REGISTER**

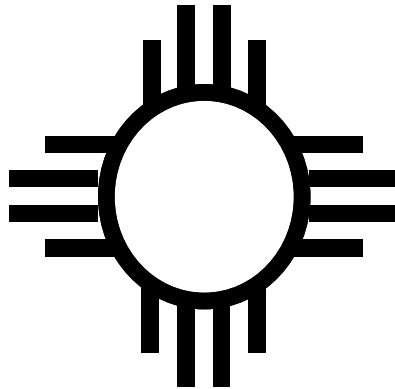


**Volume XIX  
Issue Number 21  
November 14, 2008**



# **New Mexico Register**

**Volume XIX, Issue Number 21  
November 14, 2008**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2008

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# New Mexico Register

Volume XIX, Number 21

November 14, 2008

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# Notices of Rulemaking and Proposed Rules

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

NEW MEXICO  
DEPARTMENT OF FINANCE AND  
ADMINISTRATION

STATE BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE  
RULE

The State Board of Finance is in the process of revising one of its rules: Distribution of Private Activity Bond Allocations. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe NM 87501 and on the Board of Finance website, <http://board.nmdfa.state.nm.us>. The Board will consider adopting the proposed rule at its December 16, 2008 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Stephanie Schardin, 181 Bataan Memorial building, Santa Fe, NM 87501 by December 15, 2008.

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

NEW MEXICO  
DEPARTMENT OF FINANCE AND  
ADMINISTRATION

STATE BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE  
RULE

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

building, Santa Fe, NM 87501 by December 15, 2008.

**NEW MEXICO GAME  
COMMISSION**

**STATE GAME COMMISSION  
PUBLIC MEETING  
AND RULE MAKING NOTICE**

On Thursday, December 4, 2008, beginning at 9:00 a.m., at the Mimbres Valley Special Events Center - Rooms 144-145, 2300 E. Pine St., Deming, NM 88030, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations; Fiscal Year 2009 1st Quarter Depredation Report; General Public Comments (limited to 3 minutes); Overview of San Juan River Management; Mexican Wolf Semi-Annual Program Briefing including MOU Status; State Game Commission Appointment of Citizen Advisors to the Habitat Stamp Program; Closed Executive Session (Litigation, Personnel, and Acquisition of Real Property); and Land Conservation Matters and Approval of Ancones Ranch Conservation Easement.

The following rules will be opened for public comment and consideration for adoption by the Commission:

- \* Biennial Review of New Mexico State-listed Wildlife (19.33.6.8, NMAC);
- \* Adoption of Amendments to the Hunting and Fishing Manner and Method of Taking Rule 19.31.10, NMAC, and the Boundary Descriptions for Wildlife Management Areas Rule 19.30.4, NMAC, with Associated Amendments to Deer Rule 19.31.13, NMAC; Elk Rule 19.31.14, NMAC; and Barbary Sheep, Oryx, and Persian Ibex Rule 19.31.12, NMAC;
- \* Adoption of New Rule Titled the Antelope Private Land Use System Rule 19.30.12, NMAC;
- \* Adoption of Amendments to the Pronghorn Antelope and Javelina Rule, 19.31.15, NMAC;
- \* Adoption of Amendments to the Private Land Elk License Allocation Rule 19.30.5, NMAC; and
- \* Adoption of Amendments to the Game and Fish Licenses/Permits Rule 19.30.9 NMAC, and the Hunting and Fishing License Application Rule 19.31.3, NMAC.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New

Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8029. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**NOTICE OF REGULAR MEETING**

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, November 25, 2008, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette Solano at 476-7902 by November 17, 2008. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

**NOTICE OF RULEMAKING**

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

<b>Amendment</b>	
1.18.465 NMAC Gaming Control Board	E R R D S ,
1.18.790 NMAC Department of Public Safety	E R R D S ,
<b>Repeal</b>	
1.18.355 NMAC Public Defender	E R R D S ,
1.18.539 NMAC State Land Office	E R R D S ,

**Replacement**

1.18.355 NMAC ERRDS, Public Defender Department  
1.18.539 NMAC ERRDS, State Land Office

**NEW MEXICO PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF** )  
**THE 2008 ANNUAL TITLE** )  
**INSURANCE HEARING** ) **Docket No. 08-00243-IN**  
\_\_\_\_\_ )

**AMENDED NOTICE OF HEARING TO CONSIDER PROMULGATION OF PREMIUM RATES AND PROCEDURAL ORDER**

**THIS MATTER** comes before the New Mexico Superintendent of Insurance (“Superintendent”) upon the Superintendent’s own motion, pursuant to the statutory mandate of NMSA 1978, Sections 59A-30-8(A), requiring the Superintendent to hold an annual hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held commencing on **Tuesday, November 18, 2008, at 9:30 a.m.**, and continuing thereafter as necessary in the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of considering title insurance rates. The proceeding shall be a formal administrative hearing within the meaning of NMSA 1978, Sections 59A-4-17. Certain provisions of the Administrative Procedures Act, specifically NMSA 1978, Sections 12-8-10 through 12-8-13 and 12-8-15, shall apply to the proceeding.

2. Pursuant to NMSA 1978, 59A-30-6(C), title insurance rates shall not be excessive, inadequate, or unfairly discriminatory, and shall contain an allowance permitting a profit which is not unreasonable in relation to the riskiness of the business of title insurance.

3. Any person intending to file a rate proposal or otherwise participate as a party to this proceeding shall file a motion for leave to intervene on or before **Friday, August 29, 2008**. Objections to motions for leave to intervene shall be filed on or before **Friday, September 5, 2008**.

4. Techniques of pre-hearing discovery permitted in civil actions in New Mexico, such as interrogatories, depositions, and requests for production of documents, may be employed by Staff or any party commencing on or after **Friday, September 19, 2008**. The time in which to respond to interrogatories and requests for production of documents shall be shortened to 10 calendar days after service.

5. Staff of the Insurance Division Title Insurance Bureau (“Staff”) and all other persons who have been granted leave to intervene (“parties”) who wish to submit independent written rate proposal(s) and actuarial reports(s) relating to the rate proposals(s) shall file such proposal(s) and report(s) in this docket on or before **Friday, October 17, 2008**.

6. Staff and all parties shall file the following items in this docket on or before **Monday October 20, 2008**: (a) Notice of Intent to Call Expert Witnesses, which shall include the name, address, and business association of each expert witness; (b) Witness List, which shall include addresses and telephone numbers for each witness named; and (c) Pre-filed Direct Testimony and copies of related exhibits for each lay witness and for each expert witness.

7. All lay witnesses and all expert witnesses shall file pre-filed direct testimony, appear at the hearing and submit to examination under oath.

8. Staff and all parties shall file the following items in this docket on or before **Monday November 3, 2008**: (a) Pre-filed Rebuttal Testimony and copies of related exhibits; and (b) Objections to Pre-filed Direct Testimony and exhibits.

9. Staff and all parties shall file Objections to Pre-filed Rebuttal Testimony and exhibits in this docket on or before **Wednesday, November 12, 2008**.

10. Staff and all parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing, stipulations regarding undisputed material facts and admissibility of all uncontested documents, and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding the promulgation of premium rates and any stipulations reached by the parties on or before

**Wednesday, November 12, 2008.**

11. No discovery requests or notices of taking deposition shall be served after **Wednesday, November 12, 2008**.

12. A pre-hearing conference shall be held on **Wednesday, November 12, 2007, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions and other outstanding matters related to the hearing, and to set the agenda for the hearing.

13. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the Public Regulation Commission’s Docketing Office, citing the above-referenced docket. The Docketing Office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be delivered or mailed to Charles G. Denton, Title Insurance Bureau Chief, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

14. All submissions shall be deemed filed as of the date and time stamped by the Docketing Office.

15. Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978, Sections 59A-4-16, and other applicable law.

16. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Mariano Romero at (505) 827-4526 no later than **Monday, November 14, 2008**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Mariano Romero if a summary or other type of accessible form is needed.

**DONE AND ORDERED** this \_\_\_\_ day of July 2008.

\_\_\_\_\_  
**Morris J. Chavez**  
**Superintendent of Insurance**



**NEW MEXICO PUBLIC REGULATION COMMISSION**  
**INSURANCE DIVISION**

**BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE**

IN THE MATTER OF )  
 THE 2008 ANNUAL TITLE )  
 INSURANCE HEARING ) **Docket No. 08-00242-IN**  
 \_\_\_\_\_ )

**NOTICE OF HEARING TO ADDRESS MATTERS RELATED TO THE REGULATION OF TITLE INSURANCE OTHER THAN THE PROMULGATION OF PREMIUM RATES AND PROCEDURAL ORDER**

**THIS MATTER** comes before the New Mexico Superintendent of Insurance (“Superintendent”) upon the Superintendent’s own motion, pursuant to the statutory mandate of NMSA 1978, Sections 59A-30-8(A), requiring the Superintendent to hold an annual hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held on Monday, **November 17, 2008, at 9:30 a.m.**, and continuing thereafter as necessary in the Public Regulation Commission Hearing Room, First Floor, Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico. The hearing shall be held for the purpose of adopting and/or amending regulations and forms, for determining the Insurance Fraud Fund assessment for title insurers pursuant to NMSA 1978, Sections 59A-16C-14, and for addressing other matters related to the business of title insurance. The proceeding shall be informal within the meaning of NMSA 1978, Sections 59A-4-18.
2. Staff of the Insurance Division (“Staff”) and all other persons wishing to submit proposals relating to adopting and/or amending regulations and forms, determining the insurance fraud fund assessment for title insurers pursuant to NMSA 1978, Sections 59A-16C-14, and other matters related to the business of title insurance shall file the following items in this docket on or before **Tuesday October 14, 2008**: (a) written proposal(s) and an electronic word document version of each proposal. The electronic versions may be filed in the docket on a diskette or e-mailed to charles.denton@state.nm.us; and (b) written comments and exhibits in support of their proposal(s). All written comments shall state and discuss the particular reasons for the proposal and where necessary or appropriate to effectuate the proposal, shall include specific language to implement the proposal.
3. All interested persons may testify at the hearing.
4. Written comments on proposals filed in this docket shall be filed on or before **Friday, October 24, 2008**.
5. All written comments suggesting changes to proposals shall state and discuss the particular reasons for the suggested changes and, where necessary or appropriate to effectuate the changes being suggested, shall include specific language for incorporation into the proposal.
6. The parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding regulation of title insurance other than promulgation of premium rates on or before **Wednesday, November 12, 2008**.
7. A pre-hearing conference shall be held on **Wednesday, November 12, 2008, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions related to the hearing, and to set the agenda for the hearing.
8. Proposals and comments will be available for public inspection during regular business hours at the Public Regulation Commission’s docketing office. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the docketing office, citing the above-referenced docket. The docketing office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be deliv-

ered or mailed to Charles G. Denton, Title Insurance Bureau Chief, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

9. All submissions shall be deemed filed as of the date and time stamped by the docketing office.
10. Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978, Sections 59A-4-16, and other applicable law.
11. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Mariano Romero at (505) 827-4526 no later than November 12, 2007. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Mariano Romero if a summary or other type of accessible form is needed.
12. Interested persons should contact the Docketing Office or Staff for confirmation of the hearing date, time and place since hearings are rescheduled on occasion.

**DONE AND ORDERED** this \_\_\_\_ day of July, 2008.

\_\_\_\_\_  
**Morris J. Chavez**  
**Superintendent of Insurance**

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

Regulation and Licensing Department -  
 Manufactured Housing Division  
**LEGAL NOTIFICATION OF PUBLIC HEARING**

The Regulation and Licensing Department, Manufactured Housing Division, (“Division”) hereby gives notice that the Division will conduct a public hearing to consider adopting amendments to New Mexico Administrative Code, Part 14.12.2 NMAC, Manufactured Housing Requirements.

The Hearing will be held at the Toney Anaya Building located at 2550 Cerrillos Road, Hearing Room 1, 2nd Floor, Santa Fe, New Mexico 87505 on Tuesday, December 16, 2008 and will begin at 9:00 a.m.

Copies of the proposed rules are available

on the Manufactured Housing Division Website : [www.rld.state.nm.us/MHD/index.htm](http://www.rld.state.nm.us/MHD/index.htm) or by sending a request to the Manufactured Housing Division, P.O. Box 25101, Santa Fe, New Mexico 87504. Phone (505) 476-4770.

The public is invited to attend and comment on the proposed amendments. Members of the Manufactured Housing Committee will serve as the Hearing Officer and will receive oral and written recommendations and comments regarding the proposed amendments. Written recommendations and comments, including draft language, may be submitted to the Division in advance of the meeting at the address provided below. These recommendations/comments must be provided no later than December 5, 2008, 5:00 p.m. in order to be included in the materials for the public hearing. All other recommendations/comments must be presented at the December 16, 2008 hearing.

Following the Public Hearing, the State of New Mexico Manufactured Housing Committee will convene a Regular Committee Meeting on Tuesday, December 16, 2008 at 12:30 p.m. The public is welcome to attend. Persons desiring to present their views may appear in person or send their written comments to the Manufactured Housing Division office at P.O. Box 25101, Santa Fe, New Mexico 87504.

The Committee may go into closed session during the meeting to discuss issues pertaining to issuance, suspension, renewal or revocation of a license or limited personnel matters as permitted by the Open Meetings Act. A final agenda for the meeting will be available at least 24 hours prior to the meeting and may be obtained by making a written, verbal or faxed request to the Manufactured Housing Division, P.O. Box 25101, Santa Fe, New Mexico 87504. Phone (505) 476-4770 or Fax: (505) 476-4702.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact the Manufactured Housing Division office at (505) 476-4770, prior to the meeting but not later than December 12, 2008. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Benito J. Martinez Jr., Director  
Manufactured Housing Division  
P.O. Box 25101  
Santa Fe, New Mexico 87504

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO HEALTH POLICY COMMISSION

The NM Health Policy Commission, repeals its rule entitled Data Reporting Requirements for Health Care Facilities, 7.4.1 NMAC (filed 3/13/2008) and replaces it with the new rule 7.1.4 NMAC, *Data Reporting Requirements for Health Care Facilities*, effective 11/14/2008.

### NEW MEXICO HEALTH POLICY COMMISSION

**TITLE 7           HEALTH**  
**CHAPTER 1       HEALTH GENERAL**  
**PROVISIONS**  
**PART 4           DATA REPORTING**  
**REQUIREMENTS FOR HEALTH**  
**CARE FACILITIES**

**7.1.4.1           ISSUING AGENCY:**  
New Mexico Health Policy Commission.  
[7.1.4.1 NMAC - Rp, 7.1.4.1 NMAC,  
11/14/2008]

**7.1.4.2           SCOPE:** This rule  
applies to all licensed inpatient and outpa-  
tient general and specialty health care facil-  
ities located within New Mexico.  
[7.1.4.2 NMAC - 7.1.4.2 NMAC,  
11/14/2008]

**7.1.4.3           S T A T U T O R Y**  
**AUTHORITY:** This rule is promulgated  
pursuant to Sections 24-14A-3D(5) and (6);  
24-14A-5A through C; 24-14A-8A and B;  
and 24-14A-9 of the Health Information  
System Act, Section 24-14A-1 et seq.  
NMSA 1978.  
[7.1.4.3 NMAC - Rp, 7.1.4.3 NMAC,  
11/14/2008]

**7.1.4.4           D U R A T I O N :**  
Permanent.  
[7.1.4.4 NMAC - Rp, 7.1.4.4 NMAC,  
11/14/2008]

**7.1.4.5           EFFECTIVE DATE:**  
November 14, 2008, unless a later date is  
cited at the end of a section.  
[7.1.4.5 NMAC - Rp, 7.1.4.5 NMAC,  
11/14/2008]

**7.1.4.6           OBJECTIVE:** The  
purpose of this rule is to specify the data  
reporting requirements for licensed inpa-  
tient and outpatient general and specialty  
health care facilities pursuant to the Health  
Information System Act, Section 24-14A-1  
et seq. NMSA 1978.  
[7.1.4.6 NMAC - Rp, 7.1.4.6 NMAC,

11/14/2008]

**7.1.4.7           DEFINITIONS:** In  
addition to the definitions in the Health  
Information System Act, Section 24-14A-1  
et seq. NMSA 1978, the following terms  
have the following meaning for purposes of  
this rule.

A. **Admission hour** coded in  
military time (e.g., 2:45 p.m. is repre-  
sented as 1445).

B. **Attending physician**  
NPI the national provider identifier (NPI), a  
unique, government-issued, standard identi-  
fication 10-digit number for individual  
health care providers and provider organiza-  
tions like clinics, hospitals, schools and  
group practices.

C. **Birth weight** coded in  
grams.

D. **Data provider** means a  
data source that has provided data to the  
health information system on a regular  
basis.

E. **Data source** has the  
meaning given in Section 24-14A-2 of the  
Health Information System Act, Section 24-  
14A-1 et seq. NMSA 1978, and includes  
those categories of persons or entities that  
possess health information, including any  
public or private sector licensed hospital,  
health care practitioner, primary care clinic,  
ambulatory surgery center, ambulatory  
urgent care center, ambulatory dialysis unit,  
home health agency, long-term care facility,  
pharmacy, third-party payer and any public  
entity that has health information

F. **Discharge hour** coded  
in military time (e.g., 2:45 p.m. is repre-  
sented as 1445).

G. **1st E-code** means the  
first code for external causes of injury, poi-  
soning, or adverse effect. If a patient has an  
injury diagnosis in a range of ICD-9-CM  
800-999, e-codes are required.

H. **2nd E-code** means the  
second code for external causes of injury,  
poisoning, or adverse effect. If a patient has  
an injury diagnosis in a range of ICD-9-CM  
800-999, e-codes are required.

I. **3rd E-code** means the  
third code for external causes of injury, poi-  
soning, or adverse effect. If a patient has an  
injury diagnosis in a range of ICD-9-CM  
800-999, e-codes are required.

J. **Health care** means any  
care, treatment, service or procedure to  
maintain, diagnose or otherwise affect an  
individual's physical or mental condition.

K. **Health information**  
**system or HIS** means the health informa-  
tion system established by the Health  
Information System Act, Section 24-14A-1  
et seq. NMSA 1978.

L. **Inpatient health care**  
**facility** means a hospital or other health  
facility which admits patients for overnight  
or longer (and therefore is responsible for  
patients' room and board) for the purpose of  
providing diagnostic treatment or other  
health services.

M. **Medicare provider**  
**number** means the six digit number  
assigned by medicare to the data source pro-  
viding the reported service(s).

N. **National provider**  
**identifier (NPI)** means the ten digit NPI  
from the national plan and provider enu-  
meration system (NPPES).

O. **New Mexico state**  
**license number** means the four to eight  
digit license number issued by the New  
Mexico health department for the data  
source providing the reported service(s).

P. **Operating physician**  
NPI the national provider identifier (NPI), a  
unique, government-issued, standard identi-  
fication 10-digit number for individual  
health care providers and provider organiza-  
tions like clinics, hospitals, schools and  
group practices.

Q. **Outpatient health**  
**care facility** means a hospital or other  
health facility that provides ambulatory care  
to a patient without admitting the patient to  
the facility or providing lodging services.

R. **Patient** means a person  
who has received or is receiving health care.

S. **Patient admission**  
**date** means the date the patient was admit-  
ted by the provider for inpatient care.  
Format as "MMDDYYYY". For example,  
if the admission date was July 1, 1983,  
"07011983" would be coded.

T. **Patient street address**  
means the mailing address of the patient at  
the time of discharge including street name  
and number or post office box number or  
rural route number.

U. **Patient city** means the  
city of the patient's residence at the time of  
discharge.

V. **Patient county** means  
the county of the patient's residence at the  
time of discharge.

W. **Patient state** means the  
state of the patient's residence at the time of  
discharge.

X. **Patient zip code** means  
the zip code of the patient's residence at the  
time of discharge. Use either five or nine  
digits, e.g. 87501 or 875010968.

Y. **Patient control num-**  
**ber** means the patient's unique alpha-  
numeric number assigned by the provider.

Z. **Patient date of birth**  
means the date of birth of the patient.

Required format is "MMDDYYYY". Note that all four digits of year are required, e.g., "08191898" is for August 19, 1898.

AA. **Patient discharge date** means the date the patient was discharged by the provider from the inpatient health care facility. Formatted as "MMD-DYYYY".

BB. **Patient diagnosis related group (DRG) code** means the diagnostic related group code.

CC. **Patient EMS ambulance run number** means the emergency medical services ambulance run number.

DD. **Patient ethnicity/race** means the gross classification of patient's stated ethnicity, coded as follows:

- (1) A - Asian/Pacific Islander;
- (2) B - black;
- (3) H - Hispanic;
- (4) I - Native American Indian;
- (5) O - other;
- (6) U - unknown;
- (7) W - white.

EE. **Patient first name** means the first name of the patient.

FF. **Patient last name** means the last name of patient. Last name should not have a space between a prefix and a name (as in MacBeth), but hyphenated names retain the hyphen (as in Smith-Jones). Titles should not be recorded. If the last name has a suffix, put the last name, a space, and then the suffix (as in "Snyder III"). Last name does not include abbreviations of academic achievement or profession, such as "M.D.," "Ph.D." etc.

GG. **Patient middle initial** means the middle initial of the patient.

HH. **Patient medicaid number** means the patient's unique identification number assigned by medicaid.

II. **Patient medical record number** means the medical record number used by the provider to identify the patient.

JJ. **Patient principle diagnosis code, patient 2nd diagnosis code, patient 3rd diagnosis code, patient 4th diagnosis code, patient 5th diagnosis code, patient 6th diagnosis code, patient 7th diagnosis code, patient 8th diagnosis code, patient 9th diagnosis code, patient 10th diagnosis code, patient 11th diagnosis code, patient 12th diagnosis code, patient 13th diagnosis code, patient 14th diagnosis code, patient 15th diagnosis code, patient 16th diagnosis code, patient 17th diagnosis code, patient 18th diagnosis code** means the ICD-9-CM diagnosis codes corresponding to additional conditions that co-exist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay.

KK. **Patient principle diagnosis code, present on admission; patient**

**2nd diagnosis code; present on admission; patient 3rd diagnosis code, present on admission; patient 4th diagnosis code, present on admission; patient 5th diagnosis code, present on admission; patient 6th diagnosis code, present on admission; patient 7th diagnosis code, present on admission; patient 8th diagnosis code, present on admission; patient 9th diagnosis code, present on admission; patient 10th diagnosis code, present on admission; patient 11th diagnosis code, present on admission; patient 12th diagnosis code, present on admission; patient 13th diagnosis code, present on admission; patient 14th diagnosis code, present on admission; patient 15th diagnosis code, present on admission; patient 16th diagnosis code, present on admission; patient 17th diagnosis code, present on admission; patient 18th diagnosis code, present on admission** means diagnosis was present at the time the order for inpatient admission occurs - conditions that develop during an outpatient encounter, including emergency room, observation, or outpatient surgery are considered as present on admission.

- (1) Y - yes
- (2) N - no
- (3) U - no information on the record

- (4) W - clinically undetermined
- (5) I - exempt

LL. **Patient principal procedure code, patient 2nd procedure code, patient 3rd procedure code, patient 4th procedure code, patient 5th procedure code, patient 6th procedure code** means the codes identifying the significant procedures, performed during the patient stay.

MM. **Procedure date for patient principal procedure code, procedure date for 2nd procedure code, procedure date for 3rd procedure code, procedure date for 4th procedure code, procedure date for 5th procedure code, procedure date for 6th procedure code**, means the date of the procedure that is reported as it coincides with the procedure code that was performed (mmddyyyy).

NN. **Patient social security number** means the nine digit social security number provided by the patient, without section separating characters like dashes, hyphens or slashes, for example, "585940323".

OO. **Patient status** means the code indicating patient disposition at time of discharge. The codes are:

- (1) 01 - discharged to home or self care (routine discharge);
- (2) 02 - discharged/transferred to another general hospital;
- (3) 03 - discharged/transferred to skilled nursing facility;
- (4) 04 - discharged/transferred to intermediate care facility (ICF);

(5) 05 - discharged/transferred to another type of institution;

(6) 06 - discharged/transferred to home under care of organized home health service organization;

(7) 07 - left against medical advice;

(8) 08 - reserved for national assignment;

(9) 09 - admitted as an inpatient to this hospital;

(10) 10 - 19 reserved for national assignment;

(11) 20 - expired;

(12) 21 - 29 - reserved for national assignment;

(13) 30 - still patient or expected to return for outpatient services;

(14) 31 - 39 - reserved for national assignment;

(15) 40 - expired at home (hospice claims only);

(16) 41 - expired in a medical facility, such as a hospital, SNF, ICF or free-standing hospice (hospice claims only);

(17) 42 - expired - place unknown (hospice claims only);

(18) 43 - discharged/transferred to a federal health care facility; (effective 03/31/2008) (usage note: discharges and transfers to a government operated health care facility such as a department of defense hospital, a veteran's administration (VA) hospital or VA hospital or a VA nursing facility; to be used whenever the destination at discharge is a federal health care facility, whether the patient lives there or not);

(19) 44 - 49 - reserved for national assignment;

(20) 50 - discharged/transferred to hospice - home;

(21) 51 - discharged/transferred to hospice - medical facility;

(22) 52 - 60 - reserved for national assignment;

(23) 61 - discharged/transferred within this institution to a hospital based medicare approved swing bed;

(24) 62 - Discharged/transferred to an inpatient rehabilitation facility including distinct part units of a hospital;

(25) 63 - discharged/transferred to long term care hospitals;

(26) 64 - discharged/transferred to a nursing facility certified under medicaid but not certified under medicare;

(27) 65 - discharged/transferred to a psychiatric hospital or psychiatric distinct part unit of a hospital;

(28) 66 - discharged/transferred to a critical access hospital (CAH) (effective 03/31/2008);

(29) 67 - 69 reserved for national assignment;

(30) 70 - discharge/transfer to another type of health care institution not defined elsewhere in the code list (effective

03/31/2008);

(31) 71-99 - reserved for national assignment.

**PP. Primary payer category** means one of the following broad categories assigned by the data provider to the payment source identified in the primary payer identification name field.

(1) 1 **Medicare** is the primary payer from which the provider might expect some payment.

(2) 2 **Medicaid** is the primary payer from which the provider might expect some payment.

(3) 3 **CHAMPUS/military/VA** is the primary payer from which the provider might expect some payment.

(4) 4 **IHS/PHS** (Indian health service/public health service) is the primary payer from which the provider might expect some payment.

(5) 5 **Other government** (including corrections/research) is a government entity other than those specifically listed as the primary payer from which the provider might expect some payment.

(6) 6 **Private insurance** is the primary payer from which the provider might expect some payment.

(7) 7 **Workers compensation** is the primary payer from which the provider might expect some payment.

(8) 8 **Self pay/no insurance** means the patient (or the patient's family) is the primary payer from which the provider might expect some payment.

(9) 9 **County indigent funds** are the primary payer source from which the provider might expect some payment.

(10) 10 **Charity care** means the provider does not anticipate any payment from any source, including the patient.

(11) 88 **Unknown.**

**QQ. Primary payer identification name** means the name identifying the primary payer from which the provider might expect some payment for the reported service(s).

**RR. Primary payer type** means the type of primary payer as defined below from which the provider might expect some payment for the reported services(s):

(1) 1 **HMO** - health maintenance organization;

(2) 2 **other managed care** - includes provider service networks;

(3) 3 **indemnity plan**;

(4) 88 **unknown.**

**SS. Provider zip code** means the zip code whose boundaries physically contain the facility where the reported service(s) were provided. Use either five or nine digits, e.g. 87501 or 875010968.

**TT. Secondary payer category** means one of the following broad cat-

egories assigned by the data provider to the payment source identified in the secondary payer identification name field.

(1) 1 - **Medicare** is the secondary payer from which the provider might expect some payment.

(2) 2 - **Medicaid** is the secondary payer from which the provider might expect some payment.

(3) 3 - **CHAMPUS/military/VA** is the secondary payer from which the provider might expect some payment.

(4) 4 - **IHS/PHS** (Indian health service/public health service) is the secondary payer from which the provider might expect some payment.

(5) 5 - **Other government** (including corrections/research) is a government entity other than those specifically listed as the secondary payer from which the provider might expect some payment.

(6) 6 - **Private insurance** is the secondary payer from which the provider might expect some payment.

(7) 7 - **Workers compensation** is the secondary payer from which the provider might expect some.

(8) 8 - **Self pay/no insurance** means the patient (or the patient's family) is the secondary payer from which the provider might expect some payment.

(9) 9 - **County indigent funds** are the secondary payer source from which the provider might expect some payment.

(10) 10 - **Charity care** means the provider does not anticipate any payment from any source, including the patient.

(11) 88 - **Unknown.**

**UU. Secondary payer identification name** means the name identifying a secondary payer from which the provider might expect some payment for the reported service(s).

**VV. Secondary payer type** means the type of secondary payer as defined below from which the provider might expect some payment for the reported service(s):

(1) 1 - **HMO** - health maintenance organization;

(2) 2 - **other managed care** - includes provider service networks;

(3) 3 - **indemnity plan**;

(4) 88 - **unknown.**

**WW. Sex of patient** means the sex of the patient as recorded at discharge. Enter the sex of the patient, coded as follows:

(1) female - F;

(2) male - M;

(3) unknown - U.

**XX. Source of admission** means an inpatient only code indicating the source of this admission.

(1) **Adults and pediatrics:** source of admission codes for adults and

pediatrics are:

(a) 1—physician referral - the patient was admitted to this facility upon the recommendation of his or her personal physician if other than a clinic physician or a HMO physician;

(b) 2—clinic referral - the patient was admitted to this facility upon recommendation of this facility's clinic physician;

(c) 3—HMO referral - the patient was admitted to this facility upon the recommendation of a health maintenance organization physician;

(d) 4—transfer from hospital - the patient was admitted to this facility as a transfer from an acute care facility where he or she was an inpatient;

(e) 5—transfer from skilled nursing facility - the patient was admitted to this facility as a transfer from a skilled nursing facility where he or she was an inpatient;

(f) 6—transfer from another health care facility - the patient was admitted to this facility as a transfer from a health care facility other than an acute care facility or skilled nursing facility;

(g) 7—emergency room - the patient was admitted to this facility upon the recommendation of this facility's emergency room physician;

(h) 8—court/law enforcement - the patient was admitted to this facility upon the direction of a court of law, or upon a request of a law enforcement agency representative;

(i) 9—information not available - the source of admission is unknown.

(2) **Newborns:** Newborn codes must be used when the **type of admission** is code 4. The codes are:

(a) 1—normal birth - a baby delivered without complications;

(b) 2—premature birth - a baby delivered with time or weight factors qualifying it for premature status;

(c) 3—sick baby - a baby delivered with medical complications, other than those relating to premature status;

(d) 4—extramural - A newborn birth in a non-sterile birth environment.

**YY. Total charges** means an 11 digit number rounded to the whole dollar for the total charges for all inpatient services reported.

**ZZ. Traffic crash report number** means the six digit number of the traffic crash/accident report form.

**AAA. Type of admission** means an Inpatient code indicating the priority of the admission. Type of admission codes are:

(1) 1—emergency - the patient requires immediate medical intervention as a result of severe, life threatening or potentially disabling conditions; generally, the patient is admitted through the emergency

room;

(2) 2—urgent - the patient requires immediate medical attention for the care and treatment of a physical or mental disorder; generally, the patient is admitted to the first available and suitable accommodation;

(3) 3—elective - the patient's condition permits adequate time to schedule the availability of a suitable accommodation;

(4) 4—newborn - a baby born within this facility; use of this code necessitates the use of special source of admission codes - see source of admission;

(5) 9—information not available.  
[7.1.4.7 NMAC - Rp, 7.1.4.7 NMAC, 11/14/2008]

**7.1.4.8 DATA:** [Reserved]

**7.1.4.9 STATUS OF DATA:**  
All data and health information collected from data sources shall become the property of the commission upon receipt.  
[7.1.4.9 NMAC - Rp, 7.1.4.9 NMAC, 11/14/2008]

**7.1.4.10 DATA REPORTING BY LICENSED NONFEDERAL GENERAL AND SPECIALTY INPATIENT HEALTH CARE FACILITIES:**

A. **Schedule for reporting:** licensed facilities shall submit to the commission on a yearly basis the data required by this rule in accordance with the following schedule:

(1) **reporting period:** January 1 to December 31;

(2) **report original data to commission:** no later than March 31 of the following year;

(3) **HPC will return integrity and validation errors to facilities for a 30-day review:** no later than April 30;

(4) **facilities will report corrected data back to commission:** no later than May 31;

(5) facilities reporting to their clearinghouse will continue to report quarterly for the NMHA comparative data program; however, those reporting for core measures submission will continue to report monthly.

B. **Submit the data as a vertical bar (pipe) delimited file. Follow the record layout (field lengths are maximum values).**

C. **Data required to be reported:** All licensed nonfederal general and specialty inpatient health care facilities in New Mexico shall report to the commission the following data elements, in the record layout provided by the commission:

- (1) admission hour;
- (2) attending physician NPI;
- (3) birth weight;

(4) discharge hour;  
(5) 1st E-code, left justified;  
(6) 2nd E-code, left justified;  
(7) 3rd E-code, left justified;  
(8) Medicare provider number, left justified;

(9) New Mexico state license number left justified;

(10) Operating physician NPI;

(11) patient principal diagnosis code (ICD-9-CM) left justified;

(12) patient 2nd diagnosis code (ICD-9-CM) left justified;

(13) patient 3rd diagnosis code (ICD-9-CM) left justified;

(14) patient 4th diagnosis code (ICD-9-CM) left justified;

(15) patient 5th diagnosis code (ICD-9-CM) left justified;

(16) patient 6th diagnosis code (ICD-9-CM) left justified;

(17) patient 7th diagnosis code (ICD-9-CM) left justified;

(18) patient 8th diagnosis code (ICD-9-CM) left justified;

(19) patient 9th diagnosis code (ICD-9-CM) left justified;

(20) patient 10th diagnosis code (ICD-9-CM) left justified;

(21) patient 11th diagnosis code (ICD-9-CM) left justified;

(22) patient 12th diagnosis code (ICD-9-CM) left justified;

(23) patient 13th diagnosis code (ICD-9-CM) left justified;

(24) patient 14th diagnosis code (ICD-9-CM) left justified;

(25) patient 15th diagnosis code (ICD-9-CM) left justified;

(26) patient 16th diagnosis code (ICD-9-CM) left justified;

(27) patient 17th diagnosis code (ICD-9-CM) left justified;

(28) patient 18th diagnosis code (ICD-9-CM) left justified;

(29) patient principal diagnosis code, present on admission, left justified;

(30) patient 2nd diagnosis code, present on admission, left justified;

(31) patient 3rd diagnosis code, present on admission, left justified;

(32) patient 4th diagnosis code, present on admission, left justified;

(33) patient 5th diagnosis code, present on admission, left justified;

(34) patient 6th diagnosis code, present on admission, left justified;

(35) patient 7th diagnosis code, present on admission, left justified;

(36) patient 8th diagnosis code, present on admission, left justified;

(37) patient 9th diagnosis code, present on admission, left justified;

(38) patient 10th diagnosis code, present on admission, left justified;

(39) patient 11th diagnosis code, present on admission, left justified;

(40) patient 12th diagnosis code, present on admission, left justified;

(41) patient 13th diagnosis code, present on admission, left justified;

(42) patient 14th diagnosis code, present on admission, left justified;

(43) patient 15th diagnosis code, present on admission, left justified;

(44) patient 16th diagnosis code, present on admission, left justified;

(45) patient 17th diagnosis code, present on admission, left justified;

(46) patient 18th diagnosis code, present on admission, left justified;

(47) patient principal procedure code, left justified;

(48) patient 2nd procedure code, left justified;

(49) patient 3rd procedure code, left justified;

(50) patient 4th procedure code, left justified;

(51) patient 5th procedure code, left justified;

(52) patient 6th procedure code, left justified;

(53) procedure date for patient principal procedure code (mmddyyyy);

(54) procedure date for patient 2<sup>nd</sup> procedure code (mmddyyyy);

(55) procedure date for patient 3<sup>rd</sup> procedure code (mmddyyyy);

(56) procedure date for patient 4<sup>th</sup> procedure code (mmddyyyy);

(57) procedure date for patient 5<sup>th</sup> procedure code (mmddyyyy);

(58) procedure date for patient 6<sup>th</sup> procedure code (mmddyyyy);

(59) patient admission date (mmddyyyy);

(60) patient street address, left justified;

(61) patient city, left justified;

(62) patient county, left justified;

(63) patient state, left justified;

(64) patient zip code, left justified;

(65) patient control number, left justified;

(66) patient date of birth (mmd-dyyyy);

(67) patient diagnosis related group (DRG) code;

(68) patient discharge date (mmd-dyyyy);

(69) patient EMS Ambulance run number, left justified;

(70) patient ethnicity/race;

(71) patient first name, left justified;

(72) patient last name, left justified;

(73) patient middle initial;

(74) patient Medicaid I.D. number;

(75) patient medical record num-

ber, left justified;  
 (76) patient social security number;  
 (77) patient status;  
 (78) primary payer category, right justified;  
 (79) primary payer identification name, left justified;  
 (80) primary payer type, right justified;  
 (81) provider zip code, left justified;  
 (82) secondary payer category, right justified;  
 (83) secondary payer identification name, left justified;  
 (84) secondary payer type;  
 (85) sex of patient;  
 (86) source of admission;  
 (87) total charges, right justified;  
 (88) traffic crash report number, left justified;  
 (89) type of admission.

**D. Data reporting requirements for New Mexico human services department's medicaid system:** The New Mexico human service department's medicaid system shall provide all data listed by cooperative agreement between the commission and the human services department, pursuant to the reporting schedule contained in Subsection A of 7.1.4.10 NMAC.

**E. Data reporting requirements for the medicare (part A) fiscal intermediary:** The medicare (part A) fiscal intermediary shall provide all data mutually agreed upon in accordance with law between the commission and the fiscal intermediary, pursuant to the reporting schedule contained in Subsection A of 7.1.4.10 NMAC.

**F. Annual financial statements:** All licensed nonfederal general and specialty inpatient health care facilities shall submit annual audited financial statements to the commission. If the owners of such facilities obtain one audit covering more than one facility, combined annual audited financial statements may be submitted in compliance with this section. Facilities reporting in combined annual audited financial statements must also submit annual unaudited, individual facility financial statements to the commission. These reports shall be submitted no later than the end of the calendar year following the statement year.  
 [7.1.4.10 NMAC - Rp, 7.1.4.10 NMAC, 11/14/2008]

**7.1.4.11 ELECTRONIC REPORTING REQUIREMENTS:** Starting with 2009 data, all data providers shall submit the required yearly discharge data no later than March 31 of the following

year. Submit data by electronic media, which includes CD or DVD or by direct electronic transmission, preferably in an xml (extensible markup language) or ASCII file layout, per the record layout and instruction provided by the commission. Label all data with the following information: type of data, hospital name and license number, year, file name, point of contact and telephone number. Please mail data to New Mexico Health Policy Commission, ATTN: IT Manager, 2055 South Pacheco Street, Suite 200, Santa Fe, NM 87505.  
 [7.1.4.11 NMAC - Rp, 7.1.4.11 NMAC, 11/14/2008]

**7.1.4.12 REPORTING EXEMPTIONS:** Upon written application to the commission, the commission may grant a health care facility a temporary exemption, not to exceed two reporting quarters, from the schedule required by Subsection A of 7.1.4.10 NMAC. Temporary exemption from reporting does not excuse the health care facility from reporting the data from the exempted period. Upon resumption of the regular reporting schedule the health care facility shall promptly report data for the exempted period.

[7.1.4.12 NMAC - Rp, 7.1.4.12 NMAC, 11/14/2008]

**7.1.4.13 PENALTIES FOR RULE VIOLATION:** Failure to comply with any of the reporting requirements in this rule may result in injunctive relief and a civil penalty not to exceed \$1,000 per violation, as provided by the Health Information System Act, Section 24-14A-1 et seq. NMSA 1978.

[7.1.4.13 NMAC - Rp, 7.1.4.13 NMAC, 11/14/2008]

**HISTORY OF 7.1.4 NMAC:** The material in this part was derived from that previously filed with the state records center under:

HED 90-2 (OP&E), The New Mexico Health Information System Act Regulations, 2/23/1990.

HED 90-9, (OP&E) New Mexico Health Information System Act Regulations, 12/4/1990.

HPC Rule No. 94-1, Regulations Governing the State of New Mexico Health Information System Act, 12/16/1994.

**History of Repealed Material:**

7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, (filed 8/14/1997) repealed 03/31/2008.

7.4.1 NMAC, Data Reporting Requirements for Health Care Facilities (filed 3/13/2008) repealed 11/14/2008.

**Other History:**

HPC Rule 94-1 New Mexico Health Information System Act Requirements (filed 12/16/1994) renumbered, reformatted and replaced by 7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, 08/15/1996.

7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, (filed 8/02/1996) replaced by 7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, effective 08/30/1997.

7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, (filed 8/14/1997) renumbered, reformatted and replaced by 7.1.4 NMAC, Data Reporting Requirements for Health Care Facilities, effective 03/31/2008.

7.4.1 NMAC, Data Reporting Requirements for Health Care Facilities (filed 3/13/2008) replaced by 7.1.4 NMAC, Data Reporting Requirements for Health Care Facilities, effective 11/14/2008.

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

**This is an amendment to Section 11 of 8.102.120 NMAC; effective 11/14/2008.**

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

**A. Certification period:**

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

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

**(a)** if approved for NMW, shall be assigned a NMW certification period that will end the same month as the food stamp certification period; and

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

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

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

**(a)** beginning the first month of

eligibility; and

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

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

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

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

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

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

(a) is twelve months long;

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

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

**B. Excluded from semiannual reporting:** The semiannual reporting requirement shall be assigned to all NMW benefit groups with the following exceptions:

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

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

~~(3) a benefit group in which all adult members:~~

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

~~(b) have no history of earned income in the last six months;~~

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

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

~~(b) a benefit group that reports income insufficient to meet ongoing debt obligations;~~

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

**C. Transition to semiannual reporting:**

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

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

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

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

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

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

(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 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.

~~[E] C. Participating benefit group:~~ A benefit group not assigned semiannual reporting that subsequently is required to be on semiannual reporting because of a reported change:

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

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

**[F] D. Semiannual reporting requirements:** A benefit group assigned to semiannual reporting shall be required to file a semiannual report no later than the tenth day of the sixth month of the 12-month certification period, or in compliance with the food stamp semiannual report, whichever is appropriate. The benefit group must include the following information along with necessary verification, as required at 8.100.130 NMAC:

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

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

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

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

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

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

~~(5) dependent care expenses;~~

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

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

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

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

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

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

~~(3) At recertification, eligibility and amount of payment shall be determined~~



prospectively for six months following last month benefit group's certification period.

**[H-] E. Budgeting methodology for semiannual reporting:**

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

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

**(a) Weekly:** For income received weekly the participant benefit group must submit and the department shall accept as verification ~~[of income pay data for any consecutive four week pay periods that fall within the month]~~ 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 participant benefit group must submit and the department shall accept as verification ~~[of income pay data for any two consecutive pay periods within the month]~~ 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 participant benefit group must submit and the department shall accept as verification ~~[pay data from any two consecutive pay periods within the month]~~ 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 participant benefit group must submit and the department shall accept as verification ~~[of income pay data for any one pay date within the month]~~ 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 benefit groups with income received more frequently than weekly, exact income, rather than averaged and converted income shall be used to determine benefits. For income received more frequently than weekly the participant benefit group must submit and the department shall accept as verification ~~[of income pay data in any consecutive 30 day period within the month]~~ income received from any consecutive past 30 day period that includes 30 days prior to the month the

semiannual report and the month the report is due.

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

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

**(3) Self-employment:**

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

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

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

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

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

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

**(4) Use of conversion factors:** Conversion factors shall be used to adjust

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

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

**[H-] G. Time limits for submission and processing a semiannual report.**

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

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

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

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

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

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

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

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

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

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

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

**(5)** The benefit group must return the completed semiannual report form and all required verification within ten calendar

days or by the end of the month to avoid a break in benefits. A benefit group that fails to submit a semiannual report by the end of the month in which it is due, shall be issued an adequate notice of closure.

**[J-] H. Information requirements for semiannual reporting:** The semiannual report form shall specify:

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

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

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

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

(5) the consequences of providing incorrect information; and

(6) notice of rights.

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

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

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

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

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

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

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

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

(c) a benefit group requests closure; or

(d) the department receives documented evidence that the head of benefit

group has died.

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

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

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

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

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

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

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

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

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

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

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

[8.102.120.11 NMAC - N, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 11/14/2008]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to Sections 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 of 8.102.460 NMAC; effective 11/14/2008.

**8.102.460.11 PARTICIPATION WAIVER:** Based on request and verification of existing condition, a participant may be qualified for a waiver from the work requirement.

### A. Categories of waivers:

Based on one of the following conditions a waiver be granted for an applicant or participant.

(1) Who is 60 years of age or older.

~~(2)~~ (2) A single parent, not living with the other parent of a child in the home, or caretaker relative with no spouse, with a child under the age of 12 months. This waiver shall not exceed 12 months during a participant's lifetime. No more than one such waiver is granted to a benefit group at a time.

~~(3)~~ (3) A single custodial parent caring for a child who has not attained 6 years of age or who is a medically fragile child if the parent is unable to obtain child care for one or more of the following reasons and children youth and families department (CYFD) certifies as to the unavailability or unsuitability of child care:

(a) the unavailability of appropriate child care within a reasonable distance from the participant's home or work site; or

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

~~(4)~~ (4) A woman in her third trimester of pregnancy. The waiver is extended for six weeks beyond the termination of the pregnancy when the participant's work requirement cannot be waived by another participation waiver.

~~(5)~~ (5) A participant whose personal circumstances preclude participation for a period not to exceed one month. This includes persons who are temporarily ill, who are pending a domestic violence determination, or who have requested a waiver related to disability but for which the disability waiver has not been determined.

~~(6)~~ (6) A participant who demonstrates by reliable medical, psychological or mental reports, court orders, police reports, or personal affidavits if no other evidence is available, that family violence or threat of family violence effectively bars the participant from employment.

IRU shall make the determination whether a waiver should be granted.

~~(8)~~ (7) Who is completely disabled, either temporarily or permanently, as determined by IRU in accordance with 8.102.420.11, 8.102.420.12, and 8.102.420.13 NMAC.

~~(9)~~ (8) A participant may be entitled to the family violence option (FVO). This option allows for a participant in a domestic violence environment and unable to meet work program requirements to have all work requirements waived for the length of time certified by a trained domestic violence counselor. The certification that waives work requirements shall be made, on the basis that the environment where the participant resides would make it more difficult to escape the domestic violence or would unfairly penalize the participant in light of past or current experiences. The certification shall indicate that the participant is in a domestic violence environment which precludes compliance with work program requirements.

(a) A participant's ~~DVO~~ FVO waiver shall be reviewed every six months and shall be determined by IRU based on the domestic violence counselor's certification. The participant shall be temporarily waived from work program requirements pending the determination from IRU.

(b) A participant who can continue to comply with work requirements as certified by a trained domestic violence counselor, may participate in a temporary alternative work activity for 24 weeks as described in 8.102.460.24 NMAC.

~~(10)~~ (9) Who provides the sole care for a disabled household member as defined in 8.102.420.11 NMAC.

(a) In order to show that the participant is the sole caretaker for a disabled household member, it must be demonstrated that the participant cannot be out of the home for the number of hours necessary to meet program participation requirements.

(b) Only those care activities around which work program activities cannot be scheduled are taken into consideration.

(c) Transportation to medical appointments, food purchase and preparation activities, home maintenance chores, etc. are activities which may be scheduled and performed at times other than work program participation hours and so would not be taken into consideration.

(d) A requirement to be on call for the medical emergencies of a medically fragile participant is taken into consideration in determining whether a waiver is granted.

~~(2)~~ (10) A participant may demonstrate good cause for the need for the waiver. A good cause waiver may exist and

shall be determined by IRU based on the participant's existing condition(s). Good cause is not considered to exist for failure to meet any of the above criteria.

**B. Waiver determination:** The determinations required under Paragraphs (1) - ~~(6)~~ (5) of Subsection A of 8.102.460.11 NMAC shall be made by the caseworker based on information provided by the participant requesting the waiver. The determinations required under Paragraphs ~~(7) - (9)~~ (6) - (10) of Subsection A of 8.102.460.11 NMAC shall be made by IRU based upon information provided by the participant requesting the waiver.

(1) It shall be the responsibility of the participant requesting a waiver to provide all information necessary to the caseworker. ~~[A waiver shall not be granted until the participant provides all the information needed to make the waiver determination.] A person who has requested a waiver shall be granted a temporary waiver.~~

(2) A participant who has not provided ~~all~~ any of the necessary information to make a determination within 30 day, shall be subject to meeting work program participation requirements.

(3) **Temporary waiver:** ~~[A person who has provided all information necessary to make the determination shall be temporarily granted the waiver pending final determination by IRU.] A temporary waiver shall be granted to a participant when they request a waiver. A temporary waiver shall remain while pending a final determination by IRU even if the participant provides only partial information needed to make a waiver determination.~~

**C. Complete disability and special needs and considerations:** The caseworker shall be responsible for explaining work program requirements and waivers of work program participation, including possible accommodations for special needs or considerations.

(1) Special needs or considerations may include a physical, mental, neurological or sensory impairment that limits the ability to work; functional impairments that limit mobility, such as lifting, bending, walking, sitting for a prolonged period of time and climbing stairs; learning disabilities; or substance abuse problems.

(2) A participant who requests a waiver of work program participation based on disability must submit medical reports to the county office within thirty days of requesting a waiver. The caseworker shall submit for review a completed medical social summary, request for disability determination and all medical reports to the IRU.

(3) **Incapacity review unit (IRU) responsibility:** The IRU shall have sole responsibility for reviewing all medical

reports and making a determination that a participant is waived due to disability, that there are limitations requiring special needs or considerations, or that full participation is possible.

(4) **Complete disability:** A participant may be considered completely disabled and waived from meeting work program participation requirements if the participant:

(a) has a physical or mental impairment that is expected to last at least thirty days; and

(b) cannot reasonably be expected to participate in any of the approved work program activities for the NMW work program due to the severity of the physical or mental impairment; and

(c) cannot be expected to meet applicable work program participation standards.

**D. Modified work participation agreement**

(1) **Factors limiting full participation:** Where a participant is found to be capable of engaging in work activities, and IRU has documented limiting factors in the participant's capacity to work:

(a) the caseworker shall inform the participant and work program contractor of the IRU determination;

(b) the participant shall enter into a modified work participation agreement and individual responsibility plan;

(c) the work program contractor and the participant shall develop a plan for participation in work activities that takes into account the participant's limitations;

(d) the participation in services, activities or programs designed to enhance the participant's capacity to work shall meet the requirements for participation in ~~secondary~~ non-core activities.

(2) **Modified work participation agreement:** The modified work participation agreement shall include at least twenty hours in qualified ~~primary~~ core work activities, unless the participant is temporarily exempted from full participation. The balance of the hours in the participation standard shall be considered as ~~secondary~~ non-core activities.

(a) ~~Secondary~~ Non-core activities may include all those activities identified as qualified ~~secondary~~ non-core activities.

(b) ~~Secondary~~ Non-core activities must include participation in services, activities or programs that are intended to enhance the participant's capabilities and capacity to fully participate in work program activities based upon the participant's applicable participation standard.

(c) Required ~~secondary~~ non-core activities may include, but are not limited to, additional screening and assessment

to assist the participant in identifying barriers to work; a family assessment; referrals to treatment or counseling facilities; requiring the participant to schedule and attend doctor's appointments, mental health counseling, speech and physical therapy; substance abuse treatment; or continuing participation in services already being provided.

**(3) Temporary exemption:** The IRU may temporarily exempt a participant from meeting applicable hours in the participation standard in work activities as long as the participant develops, with the work program contractor, and implements a modified work participation agreement and individual responsibility plan.

**(a)** For purposes of work registration, the participant shall be considered as a volunteer, except that the participant shall be eligible for support services during the time the participant works with the work program contractor to develop and implement the modified work participation agreement and individual responsibility plan.

**(b)** The duration of the temporary exemption shall be determined by the IRU based on the participant's identified limitations.

**(c)** The participant shall be required to work with the work program contractor to develop and implement work activities identified in the modified work participation agreement.

**(d)** The participant's modified work participation agreement may include participation in qualified work activities and may or may not meet the participant's weekly participation standard.

**(e)** The participant must participate in any services, activities, or programs that are identified in the modified work participation agreement and intended to enhance the participant's ability to work and participate fully in work activities that will lead to self-sufficiency.

**(4) Work program contractor:**

**(a)** A work program contractor may identify a work program participant with special needs or considerations related to the participant's ability to fully participate in work activities. The contractor shall:

**(i)** inform the participant of the special needs or considerations provision and the possibility of a modified work participation agreement;

**(ii)** immediately refer the participant back to the caseworker;

**(iii)** assist the participant, if necessary, in gathering all medical documentation for forwarding to the caseworker; and

**(iv)** inform the participant that the day after the day the work program contractor refers the participant back to the caseworker begins the thirty day time

period for providing medical documentation to the caseworker.

**(b)** Upon receiving notification that the IRU has determined that a participant is unable to fully participate in work activities, the work program contractor shall work with the participant to develop a modified work participation agreement that takes into account the participant's limitations and emphasizes the participant's capabilities.

**(c)** The work program contractor shall work with the participant to develop an individual responsibility plan whose ultimate goal is the successful and full participation in work program qualified work activities that will lead to self-sufficiency.

**(d)** In developing the modified work participation agreement and individual responsibility plan, the work program contractor and participant should consider all available resources in the community, referral to other agencies, and other services that will enhance the participant's capabilities and capacity to work.

**(e)** The work program contractor shall monitor the requirements and activities in the modified work participation agreement and individual responsibility plan, including increasing interaction with the participant if necessary.

**E. Waived participation limited requirements**

**(1) Requirements:** IRU may establish work participation requirements specific to the participant's circumstances and conditions. Participation requirements shall be based on medical social summary, medical documentation, mental health documentation and other related information in regards to the participant's situation. Work requirements shall meet the purposes of improving the participant's income and strengthen family support.

**(2) Component activities:** For those participants who have been determined to have a limited work capacity the following activities, but not limited to, may be allowable as the participant's [primary] core activities through the duration of the waiver such as:

**(a)** substance abuse services;

**(b)** mental health services;

**(c)** pursuit of disability benefits;

**(d)** job readiness or education directly related to employment;

**(e)** ESL courses for those participants who do not speak English; or

**(f)** residence in a domestic violence shelter or receiving counseling or treatment or participating in a criminal justice activity directed at prosecution of the domestic violence perpetrator for no longer than 24 weeks.

**(3) Review and documentation:**

At time of waiver review documentation of a participant's compliance with prescribed

limited participation activity requirements shall be provided to establish on going requirements and to evaluate further conditions or circumstances that department shall consider to determine continued waiver status.

[8.102.460.11 NMAC - Rp/E, 8.102.460.11 NMAC, 07/16/2007; A, 08/15/2007; A, 11/15/2007; A, 11/14/2008]

**8.102.460.12 NMW PARTICIPATION REQUIREMENTS:**

**A.** Participation requirements apply to each benefit group member whether the benefit group is considered to be a two-parent or single-parent benefit group. A participant subject to work participation must meet the applicable [primary] core and total work activity requirements set forth in this section and must timely meet requirements with respect to the assessment, the participant responsibility plan (IRP), submittal and approval of a work participation agreement (WPA), work activities, and timely reporting of attendance in work activities as follows:

**(1) Assessment:** The assessment shall be completed and verification received by ISD no later than 15 calendar days of application approval, or following the day of the assessment appointment as described under good cause in Subsection C of 8.102.460.14 NMAC. Except as allowed for in 8.102.460.14 NMAC, failure to verify completion of the assessment subjects the benefit group to payment sanctioning.

**(2) Individual responsibility plan (IRP):** The completed plan in accordance with 8.102.460.16 NMAC must be signed and the plan received by ISD no later than 15 calendar days from the date of approval of assistance. Failure to complete and sign the IRP subjects the benefit group to payment sanctioning.

**(3) Work participation agreement (WPA):** The WPA shall be provided to ISD no later than 15 calendar days from date of approval, in accordance with the provisions 8.102.460.16 NMAC. Failure to have an agreement submitted to ISD no later than 15 calendar days from the date of approval of assistance, when good cause does not apply, subjects the benefit group to payment sanctioning.

**(4) Work activities:** The participant must be engaged in and meet applicable participation requirements, in accordance with the WPA, no later than the fifth day after approval of the WPA, and be continuously engaged thereafter.

**(5) Reporting attendance:** Participation in work activities for a month shall be reported to ISD no later than the fifth day of the following month. Failure to meet participation requirements or to timely report attendance each month may subject the benefit group to payment sanctioning.

**B. Waiver termination:**

The time and activity schedule shall be applicable to a participant whose work program participation has been waived for a period of time but who has become ineligible for the waiver. The base month is the month in which the participant becomes subject to participation, rather than the month of approval.

**C. Reopened cases:**

(1) A participant who has been approved for benefits with less than a 12-month break in certification shall be required:

(a) to submit a revised WPA within 15 calendar days of approval;

(b) to be engaged in an allowable work activity as specified on the participant's WPA at the participation standard specified in 8.102.460.13 NMAC within 15 calendar days of approval; and

(c) to submit the participation report to ISD no later than the fifth calendar day of the month following the month in which the 15-day time limit expires; the participant shall not be required to meet the participation standard for the 15-day period described in (a) and (b) above.

(2) A participant, not granted good cause and, who fails to meet the participation requirements or to timely report work activity attendance each month may subject the benefit group to payment sanctioning.

(3) A participant who has had more than a 12-month break in benefits shall be required to meet all the steps identified in Subsection A of 8.102.460.12 NMAC.

[8.102.460.12 NMAC - Rp/E, 8.102.460.12 NMAC, 07/16/2007; A, 08/15/2007; A, 11/14/2008]

**8.102.460.13 PARTICIPATION STANDARDS:**

**A. General:** Participation standards are divided into [~~primary and secondary~~] core and non-core total activity requirements. Participation activities may be met only through those activities listed in Subsection A of 8.102.460.19 NMAC.

[~~(1) Total activity requirements are met using primary activities or using a mix of primary and secondary activities, as described at 8.102.460.19 NMAC. Activity hours used to meet primary work activity requirements are also counted in determining whether total hour requirements have been met. Unless good cause exists, failure to meet these standards results in payment sanction.~~]

[~~(2)~~] A participant subject to participation shall maintain participation and provide verification of participation at a rate at least equaling the applicable participation standard, as outlined in Subsection D of this

section, unless good cause exists to avoid being sanctioned.

**B. Calculating hours:**

(1) Hours per week represent the weekly average over the month.

(2) Time spent traveling to and from the work-site, location where child care is provided, or both, do not count as hours of participation.

(3) For paid work activities:

(a) paid leave and holiday time count as actual hours;

(b) hours shall be anticipated prospectively and verification provided no more than every six months.

(4) For non-paid activities allowable excused absences count as actual hours when:

(a) the absence occurs on a day that the participant is scheduled to participate in an activity; and

(b) is considered excused by the institution or sponsoring agency.

(5) For non-paid activities allowable holiday absences count as actual hours when:

(a) the absence scheduled holiday occurs on a day that the participant would have been scheduled to participate in an activity; and

(b) the absence is a scheduled holiday as recognized by the department and determined at the beginning of each federal fiscal year.

(6) A participant may be granted no more than [~~10 excused absences during a twelve month period and no more than two in any month. Only the prescheduled hours of participation for the day of absence shall be credited on the participants attendance report.~~] 80 hours of excused absences during a calendar year and no more than 16 hours in any one month. Any excused absence can not exceed the number of hours the participant was scheduled to work during the period of the absence.

(7) Non-paid work experience and community service participation hours are limited to the Fair Labor Standards Act (FLSA) rules. The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and number is less than the [~~primary~~] core work hour requirement the remaining hours may be deemed up. The maximum amount of weekly hours required by the FLSA are calculated as follows:

(a) **Single parent:** Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

(b) **Two-parent:** The [~~initial~~]

calculation of participation requirement hours is the same as a single parent [~~in order to calculate hours for each parent divide by two~~]. Both parents can not simultaneously participate in an activity subject to FLSA work participation standards.

**C. Defining single-parent and two-parent benefit group:**

(1) For the purpose of this determination, a two-parent benefit group shall be considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(2) For the purpose of this determination, a single-parent benefit group is any benefit group which does not include both parents of a child in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

**D. Two-parent families:**

The participation standard for a two-parent family is based on the [~~availability~~] receipt of federal funding for child care. The provisions in this rule do not apply to a two-parent family in which the youngest child is 13 years of age or older, unless the child would qualify as a special needs child under CYFD child care policies.

**(1) Two-parent participation standards:**

(a) Where both parents are mandatory work program participants, and federally funded child care is [~~available~~] received, the total participation standard shall be 59 hours per week. No fewer than 50 hours per week shall be spent in [~~primary~~] core work activities. One parent shall participate at least 30 hours per week in [~~primary~~] core work activities [~~and the other parent shall participate at least 20 hours per week in primary work activities, with the remaining amount apportioned between them as they see fit~~]. The remaining hours must be completed between the two parents appropriately for a combined total of 50 core activity hours.

(b) Where both parents are mandatory and federally funded child care is not [~~available~~] received, the total participation standard shall be [~~40~~] 39 hours per week in [~~primary~~] core work activities. [~~Each parent must participate at least 20 hours a week in primary work activities.~~] The remaining hours must be completed between the two parents appropriately and must be in a core activity.

(2) Where one parent in a two-parent benefit group has been granted a participation waiver based on disability, the mandatory parent shall be subject to the participation standard for a single parent with a child age six or older.

(3) Where one parent in a two-parent benefit group is a recipient of SSI,

the benefit group shall be considered as a single-parent benefit group, and the mandatory parent shall be subject to the appropriate participation standard for the single-parent benefit group.

(4) Where one parent in a two-parent benefit group has been granted a participation waiver for reasons other than disability, the participation standard for the mandatory parent shall be 39 hours a week, and at least 30 hours shall be spent in ~~[primary]~~ core work activities.

(5) Where one parent is ineligible, disqualified or sanctioned; the other parent shall be subject to a participation standard of 39 hours a week, ~~[and at least]~~ the minimum acceptable participation is 30 hours ~~[shall be]~~ spent in ~~[primary]~~ core work activities.

(6) Where a two-parent benefit group includes an adult who does not meet the definition of a parent, that adult shall be subject to the participation standard for a single parent with a child age six or older.

(7) Where both parents in the benefit group are under age 20, the participation standard shall be met for each parent if the parent is maintaining satisfactory attendance in secondary school or its equivalent during the month. Satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education before turning age 20.

#### E. Single-parent benefit group:

(1) **Single parent with a child age six or older:** Each mandatory participant in a single-parent or caretaker relative benefit group shall participate in ~~[primary]~~ work activities for at least 34 hours a week ~~[at all times, and of that amount, 30 hours shall be spent in a primary activity or activities]~~ of that amount the minimum acceptable participation is 30 hours a week of which at least 20 hours shall be spent in a core activity or activities.

(2) **Single parent with a child under age six:** The total participation standard for a single parent with a child under age six shall be 24 hours a week at all times, ~~[and of that amount,]~~ the minimum acceptable participation is 20 hours ~~[shall be]~~ spent in a ~~[primary]~~ core activity or activities.

(3) **Single parent under age 20:** A single parent under age 20 shall be considered to meet the single parent's total program participation standard, as outlined above when the participant:

(a) reports on a ~~[bi-weekly]~~ monthly basis ~~[satisfactory]~~ attendance at a secondary school or in a GED program; the single head of household must be enrolled in enough hours to ensure graduation prior to turning age 20 for attendance to be deemed to be meeting the participation stan-

dard as specified above based on the child's age, compliance with attendance requirements is deemed during school breaks lasting no longer than four consecutive weeks; or

(b) participates in education directly related to employment for at least the average number of hours per week specified above based on the child's age. [8.102.460.13 NMAC - Rp/E, 8.102.460.13 NMAC, 07/16/2007; A, 08/15/2007; A, 11/15/2007; A, 11/14/2008]

#### 8.102.460.16 WORK PARTICIPATION AGREEMENT:

**A. General:** The purpose of the WPA is to assure the participant and the department that the work activities in which the participant is engaged meet minimum work program requirements and that support services and support service reimbursements are approved.

**B. Contents of the agreement:** At a minimum, the WPA shall:

(1) identify the participant's proposed work activities;

(2) identify the level of effort for each activity;

(3) identify the support services to be provided by the department;

(4) be signed by the participant; and

(5) upon approval of the activities and support services, be signed by ISD.

**C. Submission of a proposed agreement:** The participant must submit a signed proposed WPA to the department:

~~(1)~~ (1) no later than 15 calendar days from date of approval, in accordance with the provisions 8.102.460.16 NMAC; or

~~(4)~~ (2) prior to requesting support services associated with such activity or claiming reimbursement for support services associated with such activity;

~~(2)~~ 15 days prior to reporting such activity for purposes of meeting minimum work program participation requirements if working when approved for benefits]; or

(3) no later than 30 calendar days from approval for benefits only if good cause criteria applies to untimely completion.

**D. Review and approval:**

(1) ISD shall approve the WPA if:  
(a) the proposed activities meet the minimum work program participation standards; and

(b) the requested support services allowable under department policy, are appropriate to the activity proposed and funding is available to support the reimbursement; and

(c) the participant has provided ISD with a copy of the participant's IRP.

(2) ISD shall deliver or mail a

copy of the reviewed agreement to the participant no later than three working days after receipt of the proposed WPA.

#### E. Denial:

(1) In the event that work activities or support services are denied, ISD shall also provide the participant with a short explanation of the reason for denial. Any change in the type of work activities or requested support services requires a new WPA.

(2) If the proposed agreement has been denied in any part, the participant shall contact ISD to discuss changes to the agreement that will allow approval. The participant must submit a revised WPA to ISD that meets work program requirements no later than 30 days from the date of approval of assistance. Failure to have an approved agreement on file by the deadline may subject the benefit group to work program sanctions.

#### F. Conciliation and sanction:

(1) A participant shall be required to enter into a conciliation if the participant refuses or fails to complete a WPA. The conciliation process is available once for work programs during each occurrence of participation and not again available until there has been a break of 12 months between occurrences of participation when a participant fails or refuses or fails to comply with the ~~[IRP]~~ WPA process shall be provided in accordance with 8.102.620 NMAC.

(2) The requirement for completion of a WPA shall not be waived by the department. Prior to entering into conciliation or imposing a sanction the department shall determine if good cause applies to a participant not meeting the required time limit. Good cause for failure to complete a timely WPA shall include those items identified in 8.102.460.17 NMAC or if the department has not demonstrated timely assistance to a participant to complete the WPA.

[8.102.460.16 NMAC - Rp/E, 8.102.460.17 NMAC, 07/16/2007; A, 08/15/2007; A, 11/14/2008]

**8.102.460.17 GOOD CAUSE FOR FAILURE TO MEET PARTICIPATION REQUIREMENTS:** A participant who has failed to meet participation requirements may avoid sanction if the participant can show good cause.

**A.** A participant with good cause for failure to participate, who expects the cause of failure to continue for more than 30 days, must contact the department to ~~[modify]~~ review the participant's ~~[condition]~~ circumstances. Good cause applies to timely completion of assessment, IRP, WPA, and work activity participation requirements. Under no conditions shall

good cause be granted for more than 30 days during any given reporting period. Good cause may be considered to exist for no more than 30 days in the event of:

- (1) family death;
- (2) hospitalization;
- (3) major injury to the participant or a benefit group member for whom the participant has been the primary caretaker;
- (4) reported domestic violence; or
- (5) catastrophic event.

**B.** Good cause shall be considered to exist when a participant meets the minimum ~~[primary]~~ work participation requirement, but may not meet the ~~[secondary]~~ total hours of participation or the non-core work requirement. There is no limit for allowing good cause for this reason during a time period; however, the department shall work with the participant to identify the reason the total work requirement is not met.

**C.** Good cause applies to a participant not meeting the required time limit to complete the assessment, IRP, or WPA when the department has not demonstrated timely assistance to a participant.

**D. Excused absences:** For non-paid activities, allowable excused absences that are not approved by the employer or sponsoring agency may be considered good cause based on the approval of ISD. There are no more than 16 allowable hours per month and no more than 80 hours in the preceding 12 month period. [8.102.460.17 NMAC - Rp/E, 8.102.460.18 NMAC, 07/16/2007; A, 11/14/2008]

#### **8.102.460.18 ORIENTATION:**

##### **A. General:**

(1) Participants of NMW who are mandatory work program participants shall be provided a work program orientation, which explains the work program and its objectives to the participant.

(2) Participants shall be given information concerning their rights, supportive services provided during participation, and transitional services available after the NMW case closes because of earnings from employment.

(3) Mandatory participants shall be informed of their responsibilities for complying with work program requirements and that failure to do so, without good cause, shall result in the reduction or loss of NMW benefits.

**B. Waiver of participation requirement:** Persons for whom work program participation was waived at the time of approval, but who later become subject to participation, shall meet the work program participation requirements and time limits set forth at 8.102.460.12 NMAC, except that instead of measuring time from the month of approval, time is

measured from the end of the month in which the waiver expires.

##### **C. Orientation content:**

(1) The orientation session provides each participant with the following information:

(a) an explanation that NMW is a temporary program intended to briefly assist the family while readying themselves for employment;

(b) an explanation of the opportunities available to the participant through the program, including education, training, work experience, and help in job search;

(c) reminder of participant's rights and responsibilities, program regulations and requirements, and the consequences for failure to meet requirements;

(d) overview of supportive services available, such as child care, transportation and education costs reimbursement, employment counseling and contacts with other agencies; ~~[supportive services are contingent on funding availability but only after the participant has exhausted all other funding resources;]~~

(e) explanation of participant's obligation to obtain an assessment and return to ISD within 15 days of the date of approval of application;

(f) explanation of participant's obligation to request approval in writing of participant's work participation activities and secure approval of activities by ISD; and

(g) overview of transitional services available to participants whose NMW case closes due to employment/earnings.

(2) Since the amount of information provided to the participant is extensive, ISD may include written program information with the orientation letter or at the orientation.

[8.102.460.18 NMAC - Rp/E, 8.102.460.20 NMAC, 07/16/2007; A, 11/14/2008]

#### **8.102.460.19 QUALIFIED WORK ACTIVITIES:**

**A. [Primary] Core work activities:** Core activities are allowable for a participant to meet the total participation standard or for a single or two parent household or to meet the minimum work participation standard as defined at 8.102.460.13 NMAC. A core activity can not be considered a non-core activity once a participant meets the minimum core requirement. For purposes of meeting the participant's participation standard ~~[primary]~~ core work activities are defined in sections 8.102.460.20 NMAC thru 8.106.420.28 NMAC.

**B. [Secondary] Non-core work activities:** Non-core activities are allowable for a participant to meet those hours in excess of the minimum work participation standard as defined at

8.102.460.13 NMAC. A [secondary] non-core activity shall include [any primary activity that is not already being credited toward the participant's participation standard as a primary work activity or] an activity as defined in 8.102.460.29 NMAC thru 8.102.460.31 NMAC.

**C. Single head of household:** A participant who is a single head of household and under age 20 shall be deemed to be meeting the single head of household's participation standard for the month if:

(1) the single parent maintains satisfactory attendance in a secondary school or its equivalent during the month, satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education before turning age 20; or

(2) participates in education directly related to employment for at least the average number of hours per week specified in 8.102.460.13 NMAC.

**D. Limited work requirement:** Based on participant circumstances and in order to address barriers a limited participation requirement shall be determined as the best placement as per Subsection E of 8.102.460.11 NMAC.

[8.102.460.19 NMAC - Rp/E, 8.102.460.14 NMAC, 07/16/2007; A, 08/15/2007; A, 11/15/2007; A, 11/14/2008]

#### **8.102.460.20 UNSUBSIDIZED EMPLOYMENT:**

**A.** Unsubsidized employment is full- or part time employment in the public or private sector that is not funded directly or in part by TANF or any other public program. Unpaid apprenticeships and unpaid internships are included as unsubsidized employment.

##### **B. General:**

(1) Hours for participants who are employed for wages at or above minimum wage will be determined by actual hours worked and will include paid leave and holidays.

(2) Hours for participants who are self employed will be determined by subtracting business expenses from gross income for the term reported and divided by the federal minimum wage.

**C. Component activities:** The following shall be considered as qualified participation hours for unsubsidized employment.

(1) A participant who is employed less than 30 hours per week in unsubsidized employment is considered to be participating in the part-time employment work program activity.

(2) A participant who is employed 30 or more hours per week is considered to

be participating in the full-time employment work program activity.

(3) A participant whose employer claims a tax credit for hiring economically disadvantaged workers in lieu of public sector subsidies, will be considered unsubsidized.

**(4) Child care as self-employment:** Participants may meet work participation requirements by providing child care services as self-employment. Participants choosing to provide child care for income shall meet the requirements as indicated below:

(a) A participant electing to participate as a child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(b) Upon placement of any child for pay, by CYFD or by a parent, the participant is considered to be employed.

**D. Supervision and documentation:** Hours of participation in an employment related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.460.20 NMAC - N/E, 07/16/2007; A, 11/14/2008]

#### 8.102.460.21 SUBSIDIZED PRIVATE SECTOR EMPLOYMENT:

**A.** Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered to be subsidized private sector employment.

**B. General:** ~~Hours.~~ New Mexico will use TANF funds to offset the wages of employing a TANF participant for an established period of time, at which time the employer is expected to hire the participant.

**C. Component activities:** The following shall be considered as qualified participation hours for subsidized private sector employment.

(1) Employment will be considered subsidized if the employer receives a TANF or other public sector funding for an employee.

(2) A participant whose employer claim a tax credit for hiring economically disadvantaged workers in lieu of public sector subsidies, will be considered unsubsidized.

(3) Public sector paid apprenticeships and paid internships shall be considered subsidized employment.

(4) Participation in various support services designed to remove barriers towards employment shall be considered countable hours as long as the participant is paid for involvement.

**D. Supervision and documentation:** Hours of participation in an employment related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.460.21 NMAC - N/E, 07/16/2007; A, 11/14/2008]

#### 8.102.460.22 SUBSIDIZED PUBLIC SECTOR EMPLOYMENT:

**A.** Employment for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a participant is considered subsidized employment. The employment will be considered subsidized if an employer receives a TANF or other public sector subsidy for an employee.

**B. General:** An employee cannot receive TANF while employed. Subsidized public sector employees will be paid no less than the greater of federal or state minimum wage.

**C. Component activities:** The following shall be considered as qualified participation hours for subsidized public sector employment.

~~(1) Job search as a paid activity not to exceed four hours per week. Paid job search will be supervised and reported as paid time.~~

~~(2) (1) Paid apprenticeships and paid internships shall be considered subsidized employment.~~

~~(3) (2) Participation in various support services designed to remove barriers towards employment shall be considered countable hours as long as the participant is paid for involvement.~~

**D. Supervision and documentation:** Hours of participation in an employment related activity will be projected, based on actual hours worked, for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

[8.102.460.22 NMAC - N/E, 07/16/2007; A, 11/14/2008]

#### 8.102.460.23 O N - T H E - J O B TRAINING (OJT):

**A.** Training in the public or private sector that is given to a paid employee that provides knowledge and skills essential to the full and adequate performance of the job shall be considered on-the-job training. On-the-job training may be subsidized or unsubsidized. The

employer of an OJT participant will retain the employee after the successful completion of the OJT contract and the existence of a written training plan; these plan requirements distinguish OJT from other subsidized employment.

#### **B. General:**

(1) Hours in an on-the-job-training activity will be determined by actual hours worked or upon the contract the HSD has with the employer including paid leave and holidays and projected for up to six months.

(2) The department will coordinate with ~~[department of labor (DOL)]~~ department of workforce solutions, Workforce Investment Act (WIA), one-stops or the New Mexico in-plant-training program to engage TANF participants in this work activity.

(3) To qualify as OJT there must be a contractual agreement with the employer and ~~the~~ HSD may pay no more than 50 percent of the participant's wage and benefit package.

**C. Component activities:** The following shall be considered as qualified participation hours for OJT:

(1) on-the-job training as paid employment; or

(2) professional certification; or

(3) practicum, internship, and clinical training.

**D. Supervision and documentation:**

(1) Hours for this activity will be projected for up to six months at which time current documentation shall be required in order to evaluate any changes in the prospective hours of participation.

(2) This activity must be supervised by an employer, work site sponsor, or other responsible party on ongoing bases no less frequently than daily.

[8.102.460.23 NMAC - N/E, 07/16/2007; A, 11/14/2008]

#### 8.102.460.24 JOB SEARCH AND JOB READINESS ASSISTANCE:

**A.** Job search includes the acts of seeking or obtaining employment, and preparation to seek or obtain employment.

#### **B. General:**

(1) Countable hours for looking for job openings, making contact with potential employers, applying for vacancies and interviewing for jobs, and in labor market training will be determined by actual hours spent ~~on~~ engaged in these activities. Travel time between these activities does count as actual hours of participation, except the travel time to and from home.

~~(2) [Job search hours are countable in meeting primary work activity participation requirements for no more than six weeks during a given federal fiscal year,~~



~~and they are countable for no more than four consecutive weeks in a row.] Job search hours are countable in meeting the core work activity participation requirements for an individual with the following limitations:~~

~~(a) a single parent with a child under age of six can not participate for more than 80 consecutive hours and not to exceed 120 hours in a preceding 12 months; or~~

~~(b) a single parent with a dependent child over age six can not participate for more than 120 consecutive hours and not to exceed 180 hours in a preceding 12 months; and~~

~~(c) in either of the above circumstance participation shall not exceed four consecutive weeks of engagement in job search and job readiness.~~

#### C. Component activities:

The following shall be considered as qualified participation hours for job search and job readiness.

(1) Participation in parenting classes, money management classes or life skills training.

(2) Participation in ~~[a certified]~~ an alcohol or drug addiction program where a qualified health or social professional ~~[certifies]~~ provides verification that such treatment or activity is necessary.

~~[(3) In the case of a homeless benefit group, finding a home.~~

~~(a) Homeless, in this instance, means the group is living in a shelter, vehicle, outdoors or in other temporary makeshift housing. It does not include persons living with relatives or friends.~~

~~(b) The search for the home may be undertaken under the auspices of a homeless program, agency or organization. It must be an organized effort with specific, identified goals and activities designed to help the family obtain a home.~~

~~(4) Participation in adult basic education (ABE), English second language (ESL) and general equivalency diploma (GED).]~~

~~[(5)] (3) Participation in job search including searching for job openings, applying for jobs and interviewing for positions.~~

#### ~~[(6)] (4) Domestic violence~~

(a) Participants who have significant barriers to employment because of domestic violence or abuse may participate in domestic violence work activity to receive services focused on assisting the participant to overcome the effects of domestic violence and abuse. Participants participating in this activity may reside in a domestic violence shelter or may receive services while residing elsewhere. The primary focus of such services is on helping the participant to move into employment. Domestic violence is a temporary work-

readiness activity limited to no more than 24 weeks.

(b) The need for domestic violence services can be identified at any point, starting with the resource planning session up to the point at which the case is scheduled for closure. Services are provided by local agencies or programs through referral.

(c) Domestic violence activity can include a mix of domestic violence services and other work program activities for no more than 24 weeks. At no point shall a victim of domestic violence be required to carry out any activity which puts the participant at risk of further violence. Domestic violence participation can include:

(i) emergency shelter or re-location assistance;

(ii) child care;

(iii) personal, family and career counseling; and

(iv) participating in criminal justice activities directed at prosecuting the perpetrator.

#### D. Supervision and documentation:

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a ~~[bi-weekly]~~ monthly timesheet.

(3) Job search and job readiness assistance activities must be supervised by the HSD or other responsible party on an ongoing basis no less frequently than daily. [8.102.460.24 NMAC - Rp/E, 8.102.460.21 NMAC, 07/16/2007; A, 08/15/2007; A, 11/14/2008]

#### 8.102.460.25 WORK EXPERIENCE:

A. [Work experience as an activity provides a participant with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment.] The purpose of work experience is to improve the employability of those who cannot find employment. Work experience may be in a public or private sector setting. ~~[Unpaid apprenticeships and unpaid internships are included as unsubsidized employment.]~~

##### B. General

(1) The type of work experience placement needed by a participant may be identified during the assessment or the development of the IRP. A participant in a work experience placement can either be employees or trainees, depending upon the nature of the placement.

##### (2) Sponsoring agencies:

Participants may be placed in either a public or private sector work site. The work site is selected based on a participant's individual needs. Sponsoring agencies provide supervision in a safe and healthy work environment and must ensure that the environment is free of discrimination based on race, sex, national origin, handicap, age, religion, or political affiliation.

(a) The sponsoring agency must enter into an agreement with the department which details the expectations and responsibilities of each party and ensures an appropriate work setting.

(b) The sponsoring agency may not displace any currently employed participant in layoff status or infringe on the promotional opportunities of any currently employed participant.

(c) The sponsoring agency shall be encouraged to give a hiring preference consideration to participants assigned to their agency.

(3) **Liability insurance:** All work providers must sign a work experience agreement and provide trainees with liability insurance. The department shall provide all participants in a trainee activity placement with medical-only liability insurance, or both while participating at a work site with a sponsoring agency. Work-site accidents must be reported to the ISD office within 24 hours of occurrence. A written accident report must be obtained from the work site by the ISD office and submitted to the department's central office within five working days.

#### C. Component activities:

~~[Participants in a work experience placement can either be employees or trainees, depending upon the nature of the placement. The following shall be considered as qualified participation hours for work experience.~~

~~(1) **Employees:** If the work experience placement involves a typical employer-employee relationship, in which the participant has a duty to perform services and the right to be compensated for those services, subject to the employer's right to control the details of performance, the participant must be paid at least the federal minimum wage, receive worker's compensation, unemployment compensation benefits and all other compensated benefits provided to employees under applicable federal and state laws.~~

~~(2) **Trainees:** Trainee activity placements are intended to provide a work training opportunity for participants who are not job ready. If the placement is a trainee activity placement, in which the training meets most or all of the following criteria, the "trainees" shall not be entitled to be paid the federal minimum wage.~~

~~(a) Training is similar to that~~

given in a vocational school.

~~(b) Training is for the benefit of the trainees.~~

~~(c) Trainees do not displace regular employees.~~

~~(d) Sponsoring agencies derive no immediate advantage from trainees' activities.~~

~~(e) Trainees are not entitled to a job after training is completed.~~

~~(f) Sponsoring agencies and trainees understand that the trainee is not paid.]~~

Placement provides a participant with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. Unpaid apprenticeships and unpaid internships are included as work experience.

#### **D. Supervision and documentation:**

(1) This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and number is less than the [primary] core work hour requirement the remaining hours may be deemed up. The maximum amount of weekly hours required by the FLSA are calculated as follows:

**(a) Single parent:** Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

**(b) Two-parent:** The initial calculation of participation requirement hours is the same as a single parent ~~[in order to calculate hours for each parent divide by two]~~. Both parents can not simultaneously participate in an activity subject to FLSA work participation standards.

[8.102.460.25 NMAC - Rp/E, 8.102.460.25 NMAC, 07/16/2007; A, 08/15/2007; A, 11/14/2008]

#### **8.102.460.26 COMMUNITY SERVICE PROGRAMS:**

**A.** Community service is a non-paid work activity. Participants provide services needed by their community. Sponsoring agencies may be either public sector or private nonprofit entities such as libraries, charities, churches, and schools. The HSD will review each placement and take into account, to the extent possible, the prior training, experience, and skills of a participant in making appropriate community service assignments.

**B. General:** To qualify as a community services placement, the activ-

ities carried out must be similar to those which would normally be carried out by a volunteer working with the agency rather than those carried out by an employee. Federal guidelines for determining whether a placement is a "volunteer" versus an "employee" must be followed by the sponsoring agency.

**C. Component activities:** The following shall be considered as qualified participation hours for community service programs.

(1) Community service programs will be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

(2) **Head-start, schools and child care centers:** Some educational and child care programs allow, or require, parents to contribute time in the classroom or on class activities outside the classroom. Time spent in such activities is considered to be community service time and is countable as a [primary] core work activity.

#### **D. Supervision and documentation:**

(1) This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily.

(2) The Fair Labor Standards Act (FLSA) standards are used to determine the maximum number of hours the department can require a participant to meet. When the participant meets the maximum number of hours required by the FLSA calculation and the number is less than the [primary] core work hour requirement. The maximum amount of monthly hours required by the FLSA are calculated as follows:

**(a) Single parent:** Add the monthly TANF cash assistance benefit to the monthly food stamp benefit and divide by the federal or state minimum wage, whichever is higher, and divide by 4.3.

**(b) Two-parent:** The initial calculation of participation requirement hours is the same as a single parent ~~[in order to calculate hours for each parent divide by two]~~. Both parents can not simultaneously participate in an activity subject to FLSA work participation standards.

[8.102.460.26 NMAC - Rp/E, 8.102.460.26 NMAC, 07/16/2007; A, 11/14/2008]

#### **8.102.460.27 CHILD CARE FOR COMMUNITY SERVICE PARTICIPANTS:**

**A.** NMW participants may meet participation requirements by providing child care services, at no cost, to other NMW participants engaged in work experience or community services.

**B. General:** Use of a

child care provider by a participant, as provided in this section, is at the sole discretion of the participant.

(1) The department will make a good faith effort to assure the provision of quality care and a safe environment by referring community service participants only to childcare providers who have been certified by CYFD. The department makes no claim as to the quality of care which will be provided, and assumes no liability, physical or emotional, regarding children referred to a home certified by CYFD.

(2) The minimum number of children a participant may care for is determined based on the number of families needing child care while participating in a community service component. However, at no time will the number exceed childcare standards established by CYFD. A participant electing to participate as child care provider is referred to CYFD to enroll in the family nutrition program and to become a registered child care provider with the state prior to placement of any children there by the department. Participants must also agree to obtain 20 hours of child care training within six months of approval.

(3) After successful registration, meeting safety regulations, and receiving training, NMW participants shall become registered child care providers. NMW participants shall then become eligible to receive payments from CYFD for providing child care services.

(4) Hours of participation are based on the number of hours each day the participant is actually providing care for the children, plus one hour before and one after the children leave for the purposes of clean-up and preparation.

(5) Upon placement of any child for pay, by CYFD or by a parent, the participant is considered to be employed.

#### **D. Supervision and documentation:**

(1) The provider is required to maintain attendance records to verify the hours of work. Also included in participation hours is time spent registering with CYFD, time spent correcting any deficiencies necessary to complete registration as well as any time spent in attendance at child care training activities.

(2) The ISD office shall maintain a list of registered child care providers who are providing non-paid child care and refer to them any participant in community services who needs child care in order to participate.

[8.102.460.27 NMAC - Rp/E, 8.102.460.27 NMAC, 07/16/2007]

#### **8.102.460.28 VOCATIONAL EDUCATION AND TRAINING:**

**A.** Organized educational programs that are directly related to the

preparation of ~~[participant-s]~~ a participant for employment in current or emerging occupations requiring training ~~[other than]~~, to include a baccalaureate or advanced degree are considered to be vocational education and training. Engagement shall be reported as ~~[primary or secondary]~~ core participation.

(1) A course of vocational education or training is one whose purpose is to provide the specific knowledge and skills needed by a participant to carry out the functions and activities of an occupation or class of occupations listed in the DOT (dictionary of occupational titles). College of education English teaching program or a school of nursing LPN program is intended to prepare a participant to work in a vocation which is described in the DOT and is considered to be vocational education. A participant will be granted a degree or certificate at the end of the program which names the occupation.

(2) The following are not considered vocational education:

(a) two- or four-year degree programs which focus on an area of information, but which are not specifically designed to ready an participant to work in that area;

(b) liberal arts degree programs.

(3) Vocational educational training must be provided by education or training organizations, which may include, but are not limited to, vocational-technical schools, community colleges, postsecondary institutions, proprietary schools, non-profit organizations, and secondary schools that offer vocational education.

#### **B. Approval of vocational education training:**

(1) A fixed number of vocational education training education slots shall be authorized by the department and shall not exceed 30 percent of the total number of persons subject to work program participation. For a participant in a slot, all approved hours of participation in vocational education activities shall count in meeting the participant's ~~[primary]~~ core work participation requirement.

(2) No more than 12 ~~[consecutive]~~ months in a lifetime of such activity are countable in meeting ~~[primary]~~ core work activity participation requirements.

(3) **Assignment to a slot:** To be approved for a vocational education placement:

(a) the participant must be admitted in the specific vocational education program by the facility providing the education or training; and

(b) the participant may not already have a post-graduate degree or have a certificate qualifying the participant to work at a particular vocation; and

(c) a vocational education slot

must be available for use; assignment to a slot is made by the caseworker on a first come, first served basis.

(4) Enrollment in an agreed-upon vocational training program is the responsibility of the participant.

(5) **Level of effort:** Participation requirement hours shall be considered based on:

(a) actual supervised class time hours;

(b) labs and similar activities are considered class time;

(c) actual hours of completed supervised study-time; ~~[and]~~

(d) one hour of unsupervised study time per hour of class not to exceed the educational program requirements; and

~~[(d)] (e)~~ holiday time and excused absences.

**C. Component activities:** Vocational educational training programs should be limited to component activities that give participants the knowledge and skills to perform a specific occupation. The following shall be considered as qualified participation hours for vocational education and training.

(1) **Vocational associate degree programs:** Programs consisting of both academic and vocational for credit course work that requires approximately 60 credits. Completion of these programs can provide an associate of arts, associates of science or associates of applied science degree in fields defined as vocational as per Subsection B of this section.

(2) **Instructional certificate programs:** Programs designed to upgrade job related skills which generally require up to a year to complete and involve less academic work than associate degrees.

(3) **Industry skills certifications:** Certificates for students who demonstrate specific skills often thru testing. Preparation for tests include both self-study and courses offered at post secondary institutions or other training providers.

(4) **Non-credit course work:** Curriculum designed to accommodate those who want specific job related skills.

#### **D. Supervision and documentation:**

(1) Verification of level of effort shall be required to determine that a participant has satisfactorily completed the hours by one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised and unsupervised hours documented on a ~~[bi-weekly]~~ monthly timesheet. [8.102.460.28 NMAC - Rp/E, 8.102.460.24 NMAC, 07/16/2007; A, 11/14/2008]

#### **8.102.460.29 JOB SKILLS TRAINING:**

**A.** Education or job skills required by an employer to provide a participant with the ability to obtain employment or to advance within the workplace is considered job skills training.

**B. General:** ~~[Secondary]~~ Non-core work activities are countable towards the total work participation standard for a participant who has completed the ~~[primary]~~ core work activity hours.

**C. Component activities:** Participation in the following is considered as meeting work participation requirement hours when combined with a ~~[primary]~~ core work activity:

(1) full-time training for adult basic education (ABE), English as a second language (ESL);

(2) post-secondary education; or

(3) any other job related training that can not be considered vocational education as outlined in ~~[8.102.460.26]~~ 8.102.460.28 NMAC.

#### **D. Supervision and documentation:**

(1) Verification of activities shall be required to determine that a participant has satisfactorily completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a ~~[bi-weekly]~~ monthly timesheet.

(3) Job skills training directly related to employment must be supervised on at least a daily ongoing basis.

~~(4) [Countable work participation hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.]~~ Countable work participation hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.

[8.102.460.29 NMAC - Rp/E, 8.102.460.19 NMAC, 07/16/2007; 8.102.460.29 NMAC - Rn, 8.102.460.30 NMAC, 11/15/2007; A, 11/14/2008]

#### **8.102.460.30 EDUCATION RELATED TO EMPLOYMENT:**

**A.** Any organized activity which is designed to improve the participant's knowledge or skills for the specific purpose of increasing the participant's ability to perform in the workplace is considered to be education directly related to employment.

**B. General:** NMW par-

Participants may engage in this activity if they have not received a high school diploma or a certificate of high school equivalency or needs specific education related to current employment or job offer. [~~Secondary~~] Non-core work activities are countable towards the total work participation standard for a participant who has completed the [~~primary~~] core work activity hours.

**C. Component activities:**

Participation in the following is considered as meeting work participation requirement hours when combined with a [~~primary~~] core work activity:

(1) English as a second language (ESL) for participants who are unable to or uncomfortable with their ability to communicate in English, either spoken or written; or

(2) literacy training for participants who have trouble understanding written English and is based on a demonstrated or acknowledged difficulty in reading comprehension, regardless of the level of education completed; or

(3) adult basic education (ABE) to assist participants who need classes providing basic educational training before working on a general equivalency degree (GED); or

(4) GED classes for participants who have completed a general equivalency diploma pre-test and the results indicate the participant is ready; or

(5) high school attendance for participants who are attending an accredited high school, participant who has recently dropped out of high school shall be encouraged to re-enroll or required to pursue a GED; or

(6) post-secondary institution for participants who are enrolled in advanced educational training activity through colleges, technical institutes or universities and who are attending classes in order to complete a two- or four-year college degree; or

(7) education directly related to employment shall include any other job related class provided by a facility or organization.

**D. Supervision and documentation:**

(1) Verification of activities shall be required to determine that a participant has [~~satisfactorily~~] completed the hours by participating in one or several of the component criteria.

(2) [~~Participation requirement hours shall be considered based on actual supervised hours documented on a bi-weekly timesheet.~~] Countable work participation hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be count-

ed, as long as the amount of study time does not exceed the educational program requirements. Hours will be documented on a monthly timesheet.

[8.102.460.30 NMAC - N, 07/16/2007; 8.102.460.30 NMAC - Rn, 8.102.460.31 NMAC, 11/15/2007; A, 11/14/2008]

**8.102.460.31 S E C O N D A R Y SCHOOL/GED:**

**A.** The secondary school/GED work program activity serves participants who are age 18 or older. This may be a qualified activity for a participant who is under age 18 but cannot enroll in high school if the participant has:

(1) successfully completed a previous education work program activity - English as a second language or adult basic education; or

(2) completed a general equivalency diploma pre-test and the results indicate the participant is ready for GED classes.

**B.** Participation must be supervised on no less than a daily basis. [~~Participants in this activity must maintain satisfactory progress as defined by the school.~~ Secondary] Non-core work activities are countable towards the total work participation standard for a participant who has completed the [~~primary~~] core work activity hours.

**C. Component activities:** Participation in the following is considered as meeting work participation requirement hours when combined with a [~~primary~~] core work activity:

(1) ABE or ESL; or

(2) GED or high school shall only be included when they are prerequisites for employment.

**D. Supervision and documentation:**

(1) Verification of activities shall be required to determine that a participant has [~~satisfactorily~~] completed the hours by participating in one or several of the component criteria.

(2) Participation requirement hours shall be considered based on actual supervised hours documented on a [~~bi-weekly~~] monthly timesheet.

(3) [~~Countable hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.~~] Countable work participation hours shall be determined by actual hours spent in class time, completion of supervised and unsupervised study hours to include holidays and excused absences. One hour of unsupervised study time for each hour of classroom time will be counted, as long as the amount of study time does not exceed the educational program requirements.

[8.102.460.31 NMAC - N, 07/16/2007; 8.102.460.31 NMAC - Rn, 8.102.460.32 NMAC, 11/15/2007; A, 11/14/2008]

**8.102.460.32 NEW MEXICO WAGE SUBSIDY PROGRAM:**

**A.** The New Mexico wage subsidy program is a subsidized employment opportunity where a TANF cash assistance participant is hired into full-time employment.

**B.** The employer is reimbursed a portion of the wages paid to the TANF cash assistance participant for up to 12 months, depending on availability of funds. Payments to employers are made from TANF block grant funds. This subsidy will be a 50-50 match.

**C. Requirements for participating employers:** Participating employers shall:

(1) hire NMW participants for subsidized positions and offer a reasonable possibility of unsubsidized employment after the subsidy period;

(2) not require participants to work in excess of forty hours per week;

(3) pay a wage that is equal to the wage paid to permanent employees performing the same job duties; and will not be less than the federal minimum wage;

(4) ensure that the subsidized employment does not impair an existing contract or collective bargaining agreement;

(5) ensure that the subsidized employment does not displace currently employed persons or fill positions that are vacant due to a layoff;

(6) maintain health, safety and work conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer;

(7) provide on-the-job training necessary for subsidized participants to perform their duties;

(8) sign an agreement for each placement outlining the specific job offered to a subsidized employee and agreeing to abide by all of the requirements of the wage subsidy program;

(9) provide workers' compensation coverage for each subsidized employee; and

(10) provide other benefits (includes but is not be limited to, health care coverage, paid sick leave, holiday and vacation pay) equal to those for new employees, or as required by state and federal law, whichever is greater.

**D. Department requirements:** The department shall determine whether a TANF cash assistance participant is eligible to participate in the program. In order to be eligible the participant must:

(1) have sufficient work experience;

(2) be registered as a participant with work programs;

(3) be in "good standing" with the department;

(4) must have citizenship documentation and a social security number.

**E. Department procedures for implementing wage subsidy:** The department shall:

(1) suspend regular TANF cash assistance payments to the benefit group for the calendar month in which an employer makes the first subsidized wage payment to a participant in the benefit group;

(2) pay employers each month, from the TANF block grant, an amount that equals fifty percent of the wages paid by the employer to program participants;

(3) issue a supplemental TANF cash assistance payment if the net monthly full-time wage paid to the participant is less than the TANF cash assistance amount for which the participant would otherwise be eligible;

(4) reimburse the participating employer each month through current invoice procedures;

(5) assist the work program contractor by making participant referrals.

**F. Effects on TANF cash assistance:**

(1) The participant is ineligible for TANF cash assistance while participating in the wage subsidy program.

(2) The months of participation in the wage subsidy program will not count against a participant's 60 month term limit.

(3) The participant remains eligible for Medicaid.

(4) The participant's wages count against his or her food stamp benefits.

(5) The participant may be eligible for a supplemental cash assistance payment if the wage subsidy employment is lost during the month, or if the net monthly full-time wage paid to the participant is less than the TANF cash assistance to which the participant would otherwise be eligible.

(6) The participant's earnings are exempt from HUD housing determinations.

(7) The participant is considered to be in active case status while in subsidized employment and, therefore, must comply with all eligibility requirements of the NMW cash assistance program.

**G. Contractor procedures for wage subsidy:** The department's work program contractor shall:

(1) offer a one-day work readiness session for all participants who are accepted into the wage subsidy program;

(2) develop a list of referrals and submit them to potential employers;

(3) submit a list of referrals to the local ISD office to verify eligibility for NMW cash assistance;

(4) assist the TANF cash assis-

tance participant in submitting an employment application to the state personnel office;

(5) provide case management by monitoring employees' work efforts and production to ensure job retention.

**H. Voluntary quit provision:**

(1) If a wage subsidy participant voluntarily quits a job without good cause the participant will no longer be considered for participation in the wage subsidy program.

(2) The TANF cash assistance participant will then have 10 days to notify the work program contractor and renew his or her work participation activities.

(3) If the TANF cash assistance participant fails to complete this process, the department will follow the policy and procedures for imposing sanctions for non-cooperation with the work program.

[8.102.460.32 NMAC - N/E, 07/16/2007; A; 08/15/2007; 8.102.460.32 NMAC - Rn, 8.102.460.29 NMAC, 11/15/2007; A, 11/14/2008]

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY MOTOR TRANSPORTATION DIVISION

This is an amendment to 18.2.3 NMAC, Sections 9 through 17, effective November 14, 2008.

**18.2.3.9 [REFERENCES TO CODE OF FEDERAL REGULATIONS:] INCORPORATION BY REFERENCE:** For the purposes of 18.2.3 NMAC, the term "Code of Federal Regulations" means the Code of Federal Regulations published by the office of the federal register, national archives and records administration ~~[in effect on October 1, 2006]~~ as presently in effect including subsequent amendments.

A. Appendix A: Code of Federal Regulations, Title 49, Parts 1 to 99, ~~[Revised as of October 1, 2006]~~, published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

B. Appendix B: Code of Federal Regulations, Title 49, Parts 100 to 185, ~~[Revised as of October 1, 2006]~~ published by the office of the federal register, are incorporated by reference as presently in effect including subsequent amendments.

C. Appendix D: Code of Federal Regulations, Title 49, Parts 200 to 399, ~~[Revised as of October 1, 2006]~~ published by the office of the federal register, are incorporated by reference as presently in

effect including subsequent amendments.

[11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.9 NMAC - Rp 18 NMAC 2.3.9, 6-29-00; A, 7/31/02; A, 3/31/03; A, 1/30/04; A, 07-16-07; A, 11-14-08]

**18.2.3.10 GENERAL:** The department of public safety hereby adopts Parts 385, 387 ~~[and]~~, 390 and Appendix F ~~(Commercial Zones) of Subchapter B of Chapter III~~ of Title 49 of the Code of Federal Regulations~~].~~ The provisions in these parts and appendix are applicable to interstate and intrastate motor carriers ~~[(49 CFR Parts 385, 387 and 390 Federal Motor Carrier Safety Regulations)], commercial motor vehicles and employees~~ with the following amendments:

A. Where the regulations refer to the United States department of transportation (DOT), ~~[and the transportation is intrastate]~~, substitute the New Mexico department of public safety.

B. Where the regulations refer to the federal motor carrier safety administration, ~~[and the transportation is intrastate]~~, substitute the New Mexico department of public safety.

C. Where the regulations refer to the secretary of the United States department of transportation, ~~[and the transportation is intrastate]~~, substitute the New Mexico secretary of the department of public safety.

D. Where the regulations refer to a special agent of the federal motor carrier safety administration, substitute all personnel safety certified and approved by the director of the motor transportation division of the department of public safety.

~~[E. Any part of 49 CFR not specifically adopted by these regulations is hereby deemed to be omitted and should not be considered to be part of these regulations.]~~

~~[F.]~~ E. Part 385.13(a) is amended to read "Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the department of public safety on the internet at <http://www.dps.nm.org> or by telephone at (505) 827-0645."

~~[G.]~~ E. Part 385.13(d) is amended to read "**Penalties.** If a proposed "unsatisfactory" safety rating becomes final, the department of public safety will issue an order placing its intrastate operations out of service. Any motor carrier that operates CMVs in violation of this section will be subject to the penalty provisions listed in Sections 66-2-9 NMSA 1978, 66-5-71 NMSA 1978, 66-5-58 NMSA 1978 and 66-8-7 NMSA 1978."

~~[H.]~~ G. Part 385.14(a) is

amended to read "A CMV owner or operator that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating CMVs in intrastate commerce."

[~~F~~] H. Part 385.14(b) is amended to read "A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the taxation and revenue department, or has failed to abide by a payment plan, may be prohibited from operating in intrastate commerce, and its registration may be suspended under the provisions of section 66-2-9 NMSA 1978."

[~~F~~] I. Part 385.15(c) is amended to read "The motor carrier must submit its request in writing to the Department of Public Safety, Motor Transportation Division [~~Director~~], P.O. Box 1628 Santa Fe, NM 87504."

J. Part 385.17(b) is amended to read "A motor carrier must make this request in writing to the Department of Public Safety, Motor Transportation Division, P.O. Box 1628 Santa Fe, NM 87504."

K. Part 390.5, Definitions, is amended to read:

(1) "*Commercial motor vehicle*" means any self propelled or towed vehicle used on public highways in commerce to transport passengers or property when:

(a) the vehicle is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more whichever is greater; or the vehicle is operated only in intrastate commerce and has a gross vehicle weight rating, or gross combination weight rating or gross vehicle weight or gross combination weight of 26,001 or more pounds whichever is greater; or

(b) is designed or used to transport more than 8 passengers (including the driver); for compensation; or

(c) is designed or used to transport more than 15 passengers, (including the driver) and is not used to transport passengers for compensation; or

(d) is used in transporting material found by the secretary of transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 CFR, subtitle B, Chapter I, subchapter C;

(2) 390.19 is amended to add: "Intrastate motor carriers operating commercial motor vehicles are required to apply for a New Mexico safety identification number from the motor vehicle division, New Mexico taxation and revenue department [~~beginning July 1, 2002. Intrastate~~

~~vehicles designed or used to transport 9 to 15 passengers (including the driver) and school buses, provided that school buses shall be subject to the applicable school bus safety provision established by the state transportation director of the New Mexico department of education, are exempted from the application requirement for the New Mexico safety identification number]."~~

(3) 390.21 is amended to add: "Intrastate carriers operating commercial motor vehicles are required to mark their vehicles with the assigned New Mexico safety identification number, preceded by the letters USDOT [~~and followed by the suffix NM~~]."

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.10 NMAC - Rp 18 NMAC 2.3.10, 6-29-00; A, 7/31/02; A, 1/30/04; A, 07-16-07; A, 11-14-08]

#### 18.2.3.11 QUALIFICATION

**OF DRIVERS:** The department of public safety hereby adopts Part 40 and Appendix A to Part 40 of Title 49 of the Code of Federal Regulations (49 CFR 40 - Procedures for Transportation Workplace Drug Testing Programs), Part 391 of Title 49 of the Code of Federal Regulations (49 CFR 391 - Qualification of Drivers), Part 382 of Title 49 of the Code of Federal Regulations (49 CFR 382 - Controlled Substances and Alcohol Use and Testing) and Appendices C (Written Examination for Drivers), D (Table of Disqualifying Drugs and Other Substances, Schedule I) and E (Table of Disqualifying Drugs and Other Substances, Schedules II through V) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. All provisions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments:

A. Part 391.2(c) is amended to read: "*Certain farm vehicle drivers*. The rules in this part do not apply to a farm vehicle driver other than a farm vehicle driver who drives an articulated (combination) motor vehicle interstate that has a gross weight, including its load, of more than 10,000 pounds or drives an articulated motor vehicle intrastate that has a gross weight, including its load, of 26,001 pounds or more."

B. Part 391.11(b)(1) is amended to read: "Is at least 21 years old; or is 18 years old and drives only in intrastate commerce operating commercial vehicles that are not required to be placarded for hazardous materials."

C. Part 391.49, Waiver of Certain Physical Defects, is amended to add: "(m) A person who is not physically qualified to drive under 391.41(b)(1) or (2)

and who is not eligible for a waiver under the provisions of 391.49 (a) through 391.49(l) and who drives only intrastate, may apply for a waiver from the Director, Motor Vehicle Division, New Mexico Taxation and Revenue Department, P.O. Box 1028, Santa Fe, New Mexico, 87504-1028 under 18.19.5.33 NMAC.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 1/30/04; A, 07-16-07; A, 11-14-08]

#### 18.2.3.12 DRIVING OF

**MOTOR VEHICLES:** The department of public safety hereby adopts Part 392 of Title 49 of the Code of Federal Regulations (49 CFR 392 - Driving of Motor Vehicles). All provisions set forth in CFR 49 Part 392 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 07-16-07; A, 11-14-08]

#### 18.2.3.13 PARTS AND ACCESSORIES NECESSARY FOR SAFE

**OPERATION:** The department of public safety hereby adopts Part 393 of Title 49 of the Code of Federal Regulations (49 CFR 393 - Parts and Accessories Necessary for Safe Operation). All provisions set forth in CFR 49 Part 393 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and drivers, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.13 NMAC - Rp 18 NMAC 2.3.13, 6-29-00; A, 07-16-07; A, 11-14-08]

#### 18.2.3.14 HOURS OF SERVICE OF DRIVERS:

The department of public safety hereby adopts Part 395 of Title 49 of the Code of Federal Regulations (49 CFR 395 - Hours of Service of Drivers). All provisions set forth in CFR 49 Part 395 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments: Where the regulation refers to 100 air mile radius, and the transportation is intrastate, substitute 150 air mile radius.

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.14 NMAC - Rp 18 NMAC 2.3.14, 6-29-00; A, 1/30/04; A, 07-16-07; A, 11-14-08]

#### 18.2.3.15 INSPECTION, REPAIR AND MAINTENANCE:

The department of public safety hereby adopts Part 396 of Title 49 of the Code of Federal Regulations (49 CFR 396 - Inspection, Repair, and Maintenance) and Appendix G (Minimum Periodic Inspection Standards) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations. All provi-

sions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with the following amendments:

A. Part 396.9(a) *Personnel authorized to perform inspections* is amended to add: "If the persons have successfully completed approved training, have met minimum performance standards and have been certified and approved by the director of the division, all personnel of the motor transportation division, police officers and any other state inspectors are authorized to enter upon and perform inspections of motor carriers' vehicles in operation."

B. Part 396.9(b) *Prescribed inspection report* is amended to add: "The driver-vehicle inspection form, MTD-10987 and MTD-10988 or computer-generated facsimile, shall be used to record results of motor vehicle inspections conducted by personnel of the motor transportation division of the department of public safety, police officers or other state inspectors authorized to perform inspections by the director of the motor transportation division."

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.15 NMAC - Rp 18 NMAC 2.3.15, 6-29-00; A, 07-16-07; A, 11-14-08]

**18.2.3.16 TRANSPORTATION OF HAZARDOUS MATERIALS - DRIVING AND PARKING RULES:** The department of public safety hereby adopts Part 397 of Title 49 of the Code of Federal Regulations (49 CFR 397 - Transportation of Hazardous Materials; Driving and Parking Rules). All provisions set forth in CFR 49 Part 397 as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 4-30-97; 18.2.3.16 NMAC - Rp 18 NMAC 2.3.16, 6-29-00; A, 07-16-07; A, 11-14-08]

**18.2.3.17 ADOPTION OF FEDERAL HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS:** The department of public safety hereby adopts Parts 107, 171, 172, 173, 177, 178 and 180 of Title 49 of the Code of Federal Regulations (49 CFR 107 - Hazardous Materials Program Procedures, 49 CFR 171 - General Information, Regulations and Definitions, 49 CFR 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements, 49 CFR 173 - Shippers - General Requirements for Shipments and Packaging, 49 CFR 177 - Carriage by Public Highway, 49 CFR 178 - Specifications for Packagings and 49 CFR

180 - Continuing Qualification and Maintenance of Packagings). All provisions set forth in these parts as adopted are applicable to interstate and intrastate motor carriers, commercial motor vehicles and employees, with no amendments.

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.17 NMAC - Rp 18 NMAC 2.3.17, 6-29-00; A, 7/31/02; A, 07-16-07; A, 11-14-08]

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

**TITLE 14 HOUSING AND  
CONSTRUCTION  
CHAPTER 8 PLUMBING CODES  
PART 3 2006 NEW MEXICO  
SWIMMING POOL, SPA AND HOT  
TUB CODE**

**14.8.3.1 ISSUING AGENCY:** Construction Industries Division (CID) of the Regulation and Licensing Department. [14.8.3.1 NMAC - N, 11/25/08]

**14.8.3.2 SCOPE:** This rule applies to all contracting work performed on swimming pools, spas, and hot tubs in New Mexico on or after January 1, 2009, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date. [14.8.3.2 NMAC - N, 11/25/08]

**14.8.3.3 STATUTORY AUTHORITY:** NMSA 1978 Section 60-13-9. [14.8.3.3 NMAC - N, 11/25/08]

**14.8.3.4 DURATION:** Permanent. [14.8.3.4 NMAC - N, 11/25/08]

**14.8.3.5 EFFECTIVE DATE:** November 25, 2008, unless a later date is cited at the end of a section. [14.8.3.5 NMAC - N, 11/25/08]

**14.8.3.6 OBJECTIVE:** The purpose of this rule is to establish minimum standards for the construction of swimming pools, spas and hot tubs in New Mexico. [14.8.3.6 NMAC - N, 11/25/08]

**14.8.3.7 DEFINITIONS:** [RESERVED] [14.8.3.7 NMAC - N, 11/25/08] [See 14.5.1 NMAC, General Provisions and chapter 2 of the 2006 uniform swimming pool, SPA & hot tub code (USPC) as

amended by this part.]

**14.8.3.8 ADOPTION OF THE 2006 UNIFORM SWIMMING POOL, SPA AND HOT TUB CODE:**

A. This rule adopts, by reference, the 2006 uniform swimming pool, spa & hot tub code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the USPC.

[14.8.3.8 NMAC - N, 11/25/08]

**14.8.3.9 CHAPTER 1 ADMINISTRATION:**

A. **101.0 - Title, Purpose and General.**

(1) **101.1 Title.** Delete this section of the USPC and substitute: This code shall be known as the 2006 New Mexico swimming pool, spa, & hot tub code (NMSPC).

(2) **101.2 Purpose.** Delete this section of the USPC and substitute: The purpose of this code is to establish minimum standards for all swimming pools, spas and hot tub construction in New Mexico.

(3) **101.3 Plans Required.** Delete this section of the USPC and see 14.5.2 NMAC, Permits.

(4) **101.4 Scope.**

(a) **101.4.1** See this section of the USPC, except as provided below.

(i) **101.4.1.1 Repairs and Alterations.** See this section of the USPC.

(ii) **101.4.1.2 Maintenance.** Delete this section of the USPC.

(iii) **101.4.1.3 Existing Construction.** Delete this section of the USPC.

(iv) **101.4.1.4 Conflicts Between Codes.** Delete this section of the USPC and see 14.5.1 NMAC General Provisions.

(b) **101.4.2** See this section of the USPC.

(5) **101.5 Application to Existing Swimming Pool, Spa, or Hot Tub Plumbing System.** See this section of the USPC, except delete subsection 101.5.5 Maintenance.

B. **102.0 Organization and Enforcement.**

(1) **102.1 Authority Having Jurisdiction.** Delete this section of the USPC.

(2) **102.2 Duties and Powers of the Authority Having Jurisdiction.**

(a) **102.2.1** Delete this section of the USPC and see Section CILA 60-13-8.

(b) **102.2.2 Right of Entry.** Delete this section of the USPC and see CILA Section 60-13-42.

(c) **102.2.3 Stop Orders.** Delete this section of the USPC and see 14.5.2 NMAC, Permits.

(d) **102.2.4 Authority to Disconnect Utilities in Emergencies.** Delete this section of the USPC and see CILA Section 60-13-42.

(e) **102.2.5 Authority to Condemn.** Delete this section of the USPC and see 14.5.1, General Provisions.

(f) **102.2.6 Liability.** Delete this section of the USPC and see CILA Section 60-13-26.

(3) **102.3 Violations and Penalties.** Delete this section of the USPC and see CILA Section 60-13-1 et seq., and 14.5.3 NMAC, Inspections.

**C. 103.0 Permits and Inspections.**

(1) **103.1 Permits.**

(a) **103.1.1 Permits Required.** Delete this section of the USPC and see 14.5.2 NMAC, Permits.

(b) **103.1.2 Exempt Work.** Delete this section of the USPC and see 14.5.2 NMAC, Permits.

(2) **103.2 Application of Permit.** Delete this section of the USPC and see 14.5.2.NMAC, Permits.

(3) **103.3. Permit Issuance.** Delete this section of the USPC and see 14.5.2 NMAC, Permits.

(4) **103.4 Fees.** Delete this section of the USPC and see 14.5.5 NMAC, Fees.

(5) **103.5 Inspections.** Delete this section of the USPC and see 14.5.3 NMAC, Inspections, except for subsection 103.5.6 Reinspections see 14.5.5 NMAC, Fees.

(6) **103.6 Connection Approval.** Delete this section of the USPC and see 14.5.3 NMAC, Inspections.

(7) **103.7 Unconstitutionality.** Delete this section of the USPC and see 14.5.1 NMAC, General Provisions.

(8) **103.8 Validity.** Delete this section of the USPC and see 14.5.1 NMAC, General Provisions.

(9) **Table 1-1 Swimming Pool, Spa, and Hot Tub Permit Fees.** Delete this section of the USPC and see 14.5.5 NMAC, Fees  
[14.8.3.9 NMAC - N, 11/25/08]

**14.8.3.10 CHAPTER 2 DEFINITIONS:** See this chapter of the USPC, except as provided below.

**A. 203.0 - Authority Having Jurisdiction** - Delete the text of this definition and substitute: The authority having jurisdiction is the construction industries division (CID) and the bureau chief of the mechanical and plumbing bureau of CID.

**B. 214.0 - Listing Agency** - See this definition in the UPC and Section

60-13-44 of the CILA.

**C. 221.0 - Shall** - Delete this text of this definition and see Section 221.0 of the UPC.

[14.8.3.10 NMAC - N, 11/25/08]

**14.8.3.11 CHAPTER 3 GENERAL REQUIREMENTS:** See this chapter of the USPC except as provided below.

**A. 302.2 Alternate Materials and Methods Equivalency.** Delete this section and see 14.8.2.11, NMAC, New Mexico Plumbing Code, and 14.5.1.11, NMAC, General Provisions.

**B. 312.0 - Wastewater Disposal.** See this section and add the following new section: 312. 7 - Sand interceptors may be omitted as in sections 1009.1 and 1016.0 UPC 2006, if the disposal of waste water from a pool is filtered or reclaimed and it can be proven to the **authority having jurisdiction** that it will not introduce levels of sand, solids, acid or alkaline substances, or other ingredients that may be harmful to the building drainage system, the public or private sewer, or to public or private sewage disposal.  
[14.8.3.11 NMAC - N, 11/25/08]

**14.8.3.12 CHAPTER 4 WATER HEATERS AND VENTS.** See this section of the USPC except as provided below.

**A. 410.9 Installation in Residential Garages.**

(1) **410.9(1)** See this section of the USPC except delete the words "unless listed as flammable vapor ignition resistant" at the end of the section.

(2) **410.9(2)** See this section of the USPC.

(3) **410.9(3)** See this section of the USPC.

**B. 411.3 Access to Equipment on Roofs.**

(1) **411.3.1** See this section of the USPC.

(2) **411.3.2** See this section of the USPC except after the words in "in height" add the following: except those designated as R-3 occupancies.

(3) **411.3.3** See this section of the USPC.

(4) **411.3.4** See this section of the USPC.  
[14.8.3.12 NMAC - N, 11/25/08]

**14.8.3.13 CHAPTER 5 FUEL GAS PIPING.** See this section of the USPC except as provided below.

**A. 503.0 Plans Required.** Delete this section of the USPC except as provided in 14.5.2, NMAC, Permits.

**B. 510.5.2.3 Copper and Brass.** Delete this section of the USPC and substitute: Copper and brass pipe shall not be used.

**C. 511.1.2 Protection Against Damage.**

(1) **511.1.2.1 Cover Requirements.** Delete this section and substitute: Underground piping systems shall be installed with a minimum of 18 inches (460 mm) of cover. Where a minimum of 18 inches (460 mm) cannot be provided, the pipe shall be installed in conduit or bridged (shielded).

(2) **511.1.2.2 Trenches.** See this section of the USPC.

(3) **511.1.2.3 Backfilling.** See this section of the USPC.

**D. 512.5 Sediment Trap.** See this section of the USPC except delete the first sentence and substitute: If a sediment trap, which is not incorporated as part of the gas utilization equipment, is installed, it shall be installed at the time the equipment is installed and as close to the inlet of the equipment as is practical.

**E. 513.0 Liquefied Petroleum Gas Facilities and Piping.** Delete this section of the USPC and substitute the following: Liquefied Petroleum gas facilities shall comply with Section 19.15.40, NMAC, Liquefied Petroleum Gas Standards, and NMSA 1978, 70-5-1 et seq., liquefied and compressed gases.  
[14.8.3.13 NMAC - N, 11/25/08]

**14.8.3.14 CHAPTER 6 PRODUCT AND MATERIALS STANDARDS.** See this section of the USPC.  
[14.8.3.14 NMAC - N, 11/25/08]

**14.8.3.15 APPENDICES.** See this chapter of the USPHSTC.  
[14.8.3.15 NMAC - N, 11/25/08]

**HISTORY OF 14.8.3 NMAC:**  
[RESERVED]

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

This is an amendment to 19.15.40 NMAC, the addition of a new section effective 11/25/08.

**19.15.40.24 STANDARDS.** This rule adopts by reference the following standards, as amended herein:

**A.** 2006 national fuel gas code, referred to as NFPA54;

**B.** 2004 liquefied petroleum gas code, referred to as NFPA 58;

**C.** 2008 guide for fire and explosion investigations, referred to as NFPA 921;

**D.** 1999 standard on recre-



ational vehicles, referred to as NFPA 1192:

E. 1999 liquefied natural gas vehicular fuel systems code, referred to as NFPA 57; and

E. 1998 compressed natural gas vehicular fuel systems code, referred to as NFPA 52.

[19.15.40.24 NMAC - N, 11/25/08]

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

This is an amendment to 14.12.2 NMAC Sections 11, 13, 15, 17, 22, 25, 41 and 57, effective 11-24-08.

**14.12.2.11 STANDARD OF CONDUCT:**

**A.** Any dealer, salesperson, or broker who receives any consideration for arranging the transfer of equity or the assumption of a loan on a manufactured home shall ascertain whether such manufactured home has a lien or security interest filed on it with the motor vehicle division of the New Mexico department of taxation and revenue. Such licensee shall insure that written consent is obtained from the holder of the lien or security interest, if any, approving the transferee's assumption of the transferor's obligation to the lien holder within ten days prior to the effective date of the transfer. For purposes of this subsection, "assumption of a loan" means any substitution or attempt to substitute the responsible persons on the contract or agreement of repayment of amounts owed to a lender and includes "wraparound" agreements.

**B.** No licensee shall aid or abet an unlicensed person to evade the provisions of the act or these regulations; knowingly combine or conspire with, or act as an agent, partner, or associate for an unlicensed person.

**C.** It is a violation of these regulations to act outside the scope of or to misrepresent intentionally or unintentionally the scope of any license issued by the division.

**D.** All conditions of a sales contract signed by a dealer or broker and homeowner must be completed within ~~forty five (45)~~ ninety (90) days from the date of delivery unless otherwise signed and agreed to by both parties.

**E.** A copy of a purchase agreement and sales contract signed by both the licensee and purchaser are to be given to the purchaser at the time of signing or closing.

[14.12.2.11 NMAC - Rp, 14 NMAC

12.2.11, 9-14-00; A, 11-24-08]

**14.12.2.13 LICENSE CLASSIFICATIONS, SCOPE AND REQUIREMENTS:**

**A.** Any person, prior to engaging in any business regulated by the act, shall obtain a license in accordance with the act and these regulations. Licensees shall at all times display their licenses conspicuously at their places of business.

**B.** Any person applying for a license that has been incorporated must submit a certified copy of the *articles of incorporation* at the time the application is filed with the division.

~~[C. The license of a franchise business shall be issued only in the name of the franchise owner. Any licensee doing business as a franchise shall display, conspicuously, the franchise owner's name on signs, in advertisement, and in all written materials. Also, the consumer protection bonds must be written in the franchise name. All requested trademarks must be filed with the Division and name simulates may not be used.]~~

[14.12.2.13 NMAC - Rp, 14 NMAC 12.2.13, 9-14-00; A, 11-24-08]

**14.12.2.15 DEALERS:**

**A.** A dealer's license entitles its holder to engage in the business of selling, exchanging, buying for resale, leasing, offering to or attempting to negotiate sales or exchanges or lease-purchases of new and pre-owned manufactured homes. A dealer may also perform all functions, which a broker is authorized to perform under the act and these regulations. Any person who in any manner acts as a dealer in the transaction of more than one manufactured home in any consecutive 12-month period is required to be licensed as a dealer.

**B.** Each dealer's location shall have a qualifying party and each location shall have a separate license.

**C.** A dealer shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal business hours by a representative of the division. A post office box, secretarial service, telephone answering service, or similar entity does not constitute an actual physically established location.

**D.** The following provisions shall govern all transactions in which a dealer is involved in a transfer of a pre-owned manufactured home between a buyer and a seller, other than the dealer.

(1) The dealer's role is that of a fiduciary to his principal.

(2) In all such transactions which

require a transfer of title, the dealer must: determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the motor vehicle division, and disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

(3) All listing agreements entered into by a dealer shall disclose the percentage amount or fee to be received by the dealer upon the completion of a transaction under the terms of the listing agreement.

(4) Prior to the closing between the buyer and seller on a transaction, the dealer shall deliver to both the buyer and the seller a closing statement which shall contain, but is not limited to, the following information: the purchase price; all funds paid and to be paid by the buyer; all funds received and to be received by the seller; receipt and disposition of all other funds relevant to the transaction; the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interests in the home.

**E.** Each dealership location must have at least one (1) licensed salesperson per location. For an individual dealer ~~[(i.e. non corporate)]~~ operating a single lot, the dealer's license shall meet the requirement of a ~~[salesman]~~ salesperson license for the person to whom it is issued. A dealership ~~[filing as a corporation]~~ operating multiple lots must have at least one (1) licensed salesperson. All persons engaged in selling manufactured homes for a dealer must be licensed with the division before engaging in the business.

**F.** Each dealer is required at the time of sale of a manufactured home to make a full disclosure to the buyer, concerning the disposition of the wheels, axles and hitch(es). Such disclosure must be signed and approved by the purchaser.

~~[G. The director of the manufactured housing division may grant a temporary display dealer license to a licensed dealership for a time period not to exceed thirty (30) days.~~

~~(1) The original consumer protection bond will cover the temporary display dealership license.~~

~~(2) The temporary display dealer's license can only be issued for a display area such as state or county fairs, shopping malls, flea markets, etc.~~

~~(3) The cost for temporary display dealer's license is twenty five dollars (\$25.00).~~

~~(4) A letter of request and the appropriate license fee must be submitted to the division and an approval received before the home(s) can be displayed. The letter of request will include the following information: how long the home will display at the~~

~~designated address; the address or location home will be displayed; the names of home(s) and serial number(s).]~~

[H.] **G.** If a dealership is open for business prior to receiving the appropriate license to conduct business, the division may tag each home with a "prohibit sales notice" and an inspection fee of \$60.00 will be charged to the dealer for removal of each such tag.

[~~H.] **H.** [Temporary—Sales Locations.] Any licensed dealership may display and offer for sale manufactured homes [in a single family residential area specifically designated for manufactured home use] off-site from the dealers physical location. All locations in which a dealer offers manufactured homes off-site from the dealers physical location are to be considered an extension of the dealers lot.~~

(1) The dealer shall notify the manufactured housing division in writing, on a form supplied by the division of the address(es) and location where homes off-site from the dealers physical location will be displayed and offered for sale.

~~(2) The fee for a temporary sales location shall be \$50.00 and shall be renewed every six months.]~~

(2) Each home displayed off-site from the dealers physical location and offered for sale must display a copy of the dealer's license and a copy of the MHD compliance poster.

(3) All rules and regulations of the manufactured housing division shall apply to ~~[temporary]~~ off-site sales locations.

[~~(4)~~] **L.** If a dealer discharges a salesperson for any activities in violation of the MHD rules and regulations the dealer must report the discharge within 30 days to the division to investigate the potential violation.

[14.12.2.15 NMAC - Rp, 14 NMAC 12.2.15, 9-14-00; A, 12-1-03; A, 7-1-05; A, 11-24-08]

**14.12.2.17 INSTALLERS AND REPAIRMEN:**

**A.** An installer's license entitles its holder to install manufactured homes for remuneration or consideration as provided for by these regulations.

**B.** A repairman's license entitles its holder to modify and repair manufactured homes for remuneration or consideration as provided for by these regulations. An exception to this rule is a person(s) who makes manufacturer's warranty repairs and is employed and paid wages by a New Mexico licensed manufacturer or its designated agent. Such person(s) are not required to maintain a repairman's license.

**C.** Licenses for installers and repairmen shall be classified as MHD-1, MHD-2, or MHD-3.

(1) MHD-1 shall permit the hold-

er to level ground and place piers to support a manufactured home, to attach and tighten tiedowns, to connect existing water and sewer lines ~~[and]~~, to connect electrical cable to the home's approved existing receptacle ~~[and]~~, to install and repair skirting, and to install concrete associated with footings or foundations.

(2) MHD-2 shall permit the holder to perform all functions of an MHD-1 and to make structural repairs, alterations and modifications.

(3) MHD-3 shall permit the holder to perform all the functions of an MHD-2 and to service and repair natural gas piping and appliances, change and adjust orifices in a manufactured home prior to connection to L.P. gas, and to service and repair plumbing and electrical systems.

(4) The scope of an MHD-3 licensee shall be extended to install gas yardlines to manufactured homes upon acquiring an appropriate endorsement from the division. No endorsement shall be issued to any individual until he has passed with a satisfactory score an examination approved and adopted by the division.

(5) The scope of an MHD-3 licensee shall be extended to install feeder assemblies from the on-site utility terminal to the manufactured home not to exceed 30 feet. The provisions for obtaining a separate electrical endorsement shall include a minimum of 2 years in the last 10 years of verifiable experience performing electrical work on manufactured homes or related equipment. No endorsement shall be issued to any individual until he has passed with a satisfactory score an examination approved and adopted by the division.

**D.** Structural repairs, alterations and modifications allowed by classifications MHD-2 and MHD-3 are limited to the manufactured home itself and include awnings and porches supported ~~[y]~~ by the home. Any structural repair, alteration or modification outside the manufactured home, including any concrete construction other than small pads for support posts, is not included under the MHD-2 or MHD-3 classifications. Licensees must comply with provisions of the Construction Industries Licensing Act. Sections 60-13-1, et. seq., NMSA 1978, to build any structure which requires a license under that act.

**E.** Waiver: The division may, upon request, waive separate licensure for any person holding a valid license in the electrical, mechanical or LP gas classifications issued under the Construction Industries Licensing Act (Sections 60-13-1, et. seq., NMSA 1978), as amended, and may permit such person to act in the capacity of an installer or repairman for electrical, mechanical or LP gas work on a manufactured home within the scope of such license. Any person requesting a waiver, in accor-

dance with this provision, shall furnish proof satisfactory to the division of his status as a licensee of the construction industries division or its successor. Nothing in this provision shall be construed as a waiver of any obligation to comply with any other requirement of the Manufactured Housing Act or these regulations, including the bonding requirements of these regulations.

**F.** An installer or repairman shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal working hours by a representative of the division. A post office box, secretarial service, telephone answering service or similar entity does not constitute an actual physically established location for purposes of this subsection.

[14.12.2.17 NMAC - Rp, 14 NMAC 12.2.17, 9-14-00; A, 3-29-02; A, 11-24-08]

**14.12.2.22 PRE-OWNED MANUFACTURED HOMES:** The following regulations apply only to pre-owned manufactured homes for the purpose of resale.

**A.** For purposes of this regulation or other laws of this state the term "habitable" as applied to manufactured housing is limited to and means that there are no known defects, damage or deterioration to the home which creates a dangerous or unsafe situation or condition~~[-AH]~~ and all plumbing, heating and electrical systems are in safe working order at the time of delivery.

**B.** Any home offered for resale that is not suitable for human habitation must be clearly marked, as such, with a posted sign not less than 18" x 12" with letters not smaller than one inch high. Also, all purchase agreements or contracts of sale must reflect that the consumer purchased the home "As Is - Not Suitable for Human Habitation".

[14.12.2.22 NMAC - Rp, 14 NMAC 12.2.22, 9-14-00; A, 11-24-08]

**14.12.2.25 FEES:**

**A.** Fees shall not be refunded.

**B.** Examination fee is fifty dollars (\$50.00).

**C.** Annual license fees:

(1) Manufacturer I: five hundred dollars (\$500.00).

(2) Manufacturer II-re-furbisher: four hundred dollars (\$400.00).

(3) Dealer: two hundred dollars (\$200.00).

(4) Installer and repairman: two hundred dollars (\$200.00).

(5) Salesperson: fifty dollars (\$50.00).

(6) Broker: two hundred dollars (\$200.00).

(7) Associate broker: fifty dollars (\$50.00).

**D.** Inspection or re-inspection fee(s): sixty five dollars (\$65.00).

**E.** Permits: sixty five dollars (\$65.00). The permit will be for the installation, permanent foundation and utility connections.

**F.** Transfer of salesperson's license: twenty-five dollars (\$25.00).

**G.** Re-issuance of qualifying party certificate from one business to another: twenty-five dollars (\$25.00).

**H.** Manufacturer II-re-furbisher inspection permit: one hundred and twenty dollars (\$120.00).

**I.** Contractors and journeyman licensed by the construction industries division performing work on manufactured homes shall be registered with the manufactured housing division (MHD) and pay an annual registration fee of two hundred dollars (\$200.00) per licensee and post with MHD an installer's or repairman's consumer protection bond, pursuant to Section 14.12.2.31 NMAC.

**J.** Addition of a qualifying party to an existing license: twenty-five dollars (\$25.00).

**K.** Bad or returned checks:

(1) An additional charge of \$20.00 shall be made for any check, which fails to clear or is returned for any reason.

(2) Such returned checks shall cause any license issued, renewed or test scheduled as the result of such payment to be immediately suspended until proper payment in full is received.

**L.** Consumer complaint inspections: sixty five dollars (\$65.00) for each inspection. Inspections shall be paid by the installer/repairman, dealer, manufacturer or broker, as appropriate.

~~[M. Temporary Dealer's Display License: Twenty five Dollars (\$25.00).]~~

~~[N.]~~ **M.** Pre-owned label: forty dollars (\$40.00).

~~[O.]~~ **N.** Change of a licensee's name, address or license status: twenty-five dollars (\$25.00).

~~[P.]~~ **O.** Inspection fee for removal of a "Prohibited Sales Notice" by the division: sixty dollars (\$60.00).

~~[Q.]~~ **P.** Requested inspection: sixty five dollars (\$65.00).

~~[R.]~~ **Q.** Manufacturer's supervision or compliance monitoring, pursuant to an amount approved by HUD.

[14.12.2.25 NMAC - Rp, 14 NMAC 12.2.25, 9-14-00; A, 8-11-03; A, 12-1-03; A, 11-24-08]

**14.12.2.41 INSPECTION PER-**

**MITTS:**

**A.** No manufactured home shall be installed in New Mexico unless the installer, or homeowner, if authorized, has obtained an installation ~~[and/or]~~ or permanent foundation inspection permit(s) from the division.

**B.** Installation inspection permits shall include the name and license number of each licensee performing installation work and the consumer's name and address. Names and license numbers of licensee shall be included on the permit at the time of final inspection. Incomplete or inaccurate permits shall be considered an inspection failure and will be subject to re-inspection. When the consumer's address is a post office box or rural route, a map showing the current location shall be included. Unlicensed homeowners performing work on their own principal residential property must perform all the work themselves, or must employ or contract division approved licensees, to perform said work. The unlicensed homeowner shall execute a document, prepared by the division, acknowledging their understanding and expertise, pursuant to federal and New Mexico installation rules, regulations, standards, including the manufacturer's installation and site engineering requirements; and, shall assume all legal liability for any work performed, or under the supervision or contract of said homeowner. The unlicensed homeowner shall assume all responsible for compliance with all local and state requirements, codes and inspection requirements.

**C.** Installation inspection permits shall be returned to the division in accordance with the instructions on the permit. Upon final inspection, inspectors shall certify on the permit, or upon any inspection report, that the manufactured home meets the minimum standards for use and occupancy provided for by the act and these regulations.

**D.** Permits are valid one hundred eighty (180) days from the date of issuance. A time extension may be granted by the division for delay occasioned by weather conditions or with inspections involving a home that is being re-manufactured or installed on a permanent foundation.

**E.** An installation permit must be issued with each new or pre-owned manufactured home to be installed in the state of New Mexico. The issued permit shall be utilized by the person who installs the home.

**F.** Upon a written request the division may issue a \$15.00 permit for any alteration, modification or repair of a manufactured home or any component part of a manufactured home except warranty work, which is performed under a previous

permit and installation.

**G.** Any system or structural modification work done under the manufacturer II license must be permitted and inspected.

**H.** If a manufactured home installation is made without a permit, the homeowner, dealer or installer will be subject to a fine of a double permit fee.

**I.** The division may assess a re-inspection fee against any person found to be in violation of this regulation.

**J.** Upon a written request the division may issue a \$15.00 permit for an existing installation when the home is converting from LP gas to natural gas or natural gas to LP gas.

**K.** ~~[Where a licensed installer does not perform the gas pressure test on a manufactured home the installer shall leave the original installation permit taped to the furnace door. (This applies only to natural gas homes.)] Permit must be affixed to the window closest to the front exterior door in a weather resistant container. The container shall be affixed to the exterior of the window for access to all licensee's and division inspection.~~

[14.12.2.41 NMAC - Rp, 14 NMAC 12.2.41, 9-14-00; A, 7-1-05; A, 11-24-08]

**14.12.2.57 PERMANENT FOUNDATION SYSTEM:**

**A.** These standards are minimum state requirements and they are applicable to new and used home installations, unless expressly specified otherwise. The division may approve other permanent foundations when the manufacturer's installation manual does not make a provision for permanent foundations or is not available. Two sets of drawings submitted by a New Mexico licensed engineer or a HUD approved D.A.P.I.A engineer may be submitted to the division for review, and subsequent denial or approval along with a certificate that the engineer has contacted the home's manufacturer. No political subdivision of the state shall regulate the installations or construction standards, of a manufactured home, including foundation systems.

**B.** Perimeter enclosure.

(1) All materials used for a perimeter enclosure must be approved by the division.

(2) Materials shall be installed in accordance with the manufacturer's recommended installation instructions or in accordance with the minimum standards accepted by the division.

(3) The manufactured home's perimeter enclosure must be self-ventilating, and no flammable objects may be stored under the manufactured home.

(4) An access or inspection panel

shall be installed in the perimeter enclosure and shall be located so that utilities and blocking may be inspected.

(5) All vents and openings shall be installed to prevent entry of rodents and direct rainfall not to exceed ¼ inch mesh.

(6) All perimeter enclosures in excess of thirty inches (30") in height must be supported vertically at least every four (4') feet or installed according to the enclosure manufacturer's specifications.

**C.** New home installations: The manufacturer's installation manual shall be followed for all new homes installed within the state of New Mexico. The person(s) performing the work to install a new home shall be responsible to insure that all necessary installation permits have been obtained by the homeowner, customer or installer, to be determined in writing prior to the delivery of subject home. Compliance with permanent foundation criteria, site work 14.12.2.60 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work.

**D.** Installation of used, pre-owned or resold manufactured homes: The installer of a used, pre-owned or resold manufactured home shall be responsible to insure that all necessary installation permits have been obtained by the customer, retailer and or installer ~~[to be determined in writing prior to delivery of subject home]~~. Compliance with permanent foundation criteria, site work 14.12.2.60 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work. The manufacturer's manual shall be kept with the subject home at all times. The installer shall use the manufacturer's installation instructions and installation manual when available.

**E.** Re-installed ~~[units]~~ units: The following regulations shall apply to all homes being re-installed where no manufacturer's installation manual is provided.

(1) The lowest point of the frame shall be a minimum of eighteen (18") inches above the ground level under the manufactured home (also see Section 14.12.2.56 NMAC).

(2) The slope around the manufactured home shall provide for the control and drainage of surface water and shall be sufficient to prevent the collection of water under the home or around the perimeter of the home (see site requirements, Section 14.12.2.60 NMAC).

(3) In lieu of an engineered soil report, the soil conditions (relative to the placement of the foundation) at the installation site shall be tested by the installer prior

to installing the foundation and shall be an average of at least 1000 psf with no more than 25% variability between readings. The installer shall list the psf measurement on the permanent foundation permit. Testing and recording shall be conducted as follows:

(a) test an area adjacent to, or within 10 feet of, the perimeter of the home;

(b) dig down to undisturbed soil a minimum of four (4) inches; uncover an area of at least one square foot;

(c) using a penetrometer take at least seven readings;

(d) take an average of the middle five readings disregarding the highest and lowest readings; round the average down to the nearest soil bearing value;

(e) installers shall then record the psf measurement on the permanent foundation permit; and

(f) drive a wooden stake beside the test area so that the inspector will be able to verify the results should the inspector desire to do so.

**F.** A minimum thirty-two inch by thirty-two inch (32"X32") access or inspection panel shall be installed a minimum of three (3") inches above grade and located to allow inspection at any time. The cover on the exterior access inspection panel must be constructed to exclude entry of vermin and water.

**G.** Footings and piers:

(1) The manufactured home shall be installed on ribbon footings set on the undisturbed ground not less than five and one-half (5 1/2") inches in thickness and sixteen (16") inches in width with two (2) pieces of continuous three-eighth (3/8") inch rebar or a number 10 gauge re-mesh wire installed in the footing. All footings shall be constructed of a minimum of three thousand (3000) pound concrete. All above grade footings shall be constructed with forms (wood, fiberboard, metal, plastic), used to contain poured concrete while in a plastic state. These forms must be firmly braced to withstand side pressure or settlement and to maintain design dimensions. Finished concrete surface(s) shall be smooth and level to fully accept and support pier installation(s). Forms may be removed upon sufficient hardening of concrete. The home may be placed whenever concrete is properly cured, minimum of seven (7) days.

(2) Piers shall be constructed in accordance with Section 14.12.2.56 NMAC of these regulations.

(3) The steel frame must be attached to the footing supporting the structure by means of a listed anchoring device at least every twelve (12) feet at a minimum and at least two (2) feet from each end wall.

**H.** Ventilation:

(1) All manufactured homes shall have one (1) square foot of unrestricted

venting area for every one hundred-fifty (150) square feet of enclosed floor space. Vents shall be uniformly distributed on the two (2) opposite long- walls. At least one vent shall be located within four (4) feet of each end-wall.

(2) Vents shall be constructed and installed to exclude entry of vermin and water.

**I.** Alternative permanent foundation systems:

(1) Other types of permanent foundation systems designed for the purpose of classifying an installation as a permanent foundation shall be submitted on an individual basis. These require submittal of installation instructions, calculations and design layouts. All submissions shall be stamped by a New Mexico licensed engineer, and each application shall be region specific. Commercially packaged systems must submit their complete installation and design package to be kept on file with the division. It shall be the responsibility of the system proprietor to submit any updates or alterations of the system.

(2) Any installation of an alternative foundation system on a new home or any home within two years of original purchase must be installed based upon the manufacturer's written approval or be included in the manufacturer's installation manual.

[14.12.2.57 NMAC - Rp, 14 NMAC 12.2.50, 9-14-00; A, 12-1-03; A, 7-1-05; A, 02-21-07; A, 11-24-08]

## NEW MEXICO SECRETARY OF STATE

### TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 30 NATIVE AMERICAN VOTING

**1.10.30.1 ISSUING AGENCY:** Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.

[1.10.30.1 NMAC - N/E, 10-31-08]

**1.10.30.2 SCOPE:** This rule applies to any special statewide election, general election, primary election of elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).

[1.10.30.2 NMAC - N/E, 10-31-08]

**1.10.30.3 STATUTORY AUTHORITY:** Election Code, Sections 1-2-1, 1-2-3 and 1-6-5.6 NMSA 1978.

[1.10.30.3 NMAC - N/E, 10-31-08]

**1.10.30.4 D U R A T I O N :**  
Permanent.  
[1.10.30.4 NMAC - N/E, 10-31-08]

**1.10.30.5 EFFECTIVE DATE:**  
October 31, 2008, unless a later date is cited at the end of a section.  
[1.10.30.5 NMAC - N/E, 10-31-08]

**1.10.30.6 OBJECTIVE:** The purpose of this rule is to provide procedures for conducting voting by Native Americans.  
[1.10.30.6 NMAC - N/E, 10-31-08]

**1.10.30.7 DEFINITIONS:**  
**A. Alternate site** means an alternate early voting location that is situated on the land of an Indian nation, tribe or pueblo as provided for in this rule.

**B. Ballot** means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

**C. Request** means a request from an Indian nation, tribe or pueblo for an alternate site.

**D. 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.  
[1.10.30.7 NMAC - N/E, 10-31-08]

**1.10.30.8 REQUESTS:**  
**A. Requests.** Requests for alternate sites shall be made by the chief executive officer or designee, or by the governing council or body, of an Indian nation, tribe or pueblo. The request need not be in writing, but if the request is not in writing, the county clerk shall keep a record of the request, including the date and the name of the person who made the request. Requests shall be made at least 14 days before early voting commences.

**B. Request responses.** After a request has been received, the county clerk shall acknowledge, in writing, receipt of the request to the appropriate Indian nation, tribe or pueblo requesting officer, designee, governing council or body. The county clerk shall also provide a copy of the acknowledgement to the secretary of state.  
[1.10.30.8 NMAC - N/E, 10-31-08]

**1.10.30.9 ACTION FOLLOWING RECEIPT OF A REQUEST:**

**A. Location of alternate site.**

(1) If a county clerk receives a request from an Indian nation, tribe or pueblo with a boundary that is located less than fifteen miles from the office of a county clerk for a county in which the Indian nation, tribe or pueblo is located, the coun-

ty clerk is strongly encouraged to provide an alternate site.

(2) If a county clerk receives a request from an Indian nation, tribe or pueblo with a boundary that is located more than fifteen miles from the office of a county clerk for a county in which the Indian nation, tribe or pueblo is located, the county clerk shall provide an alternate site as required by Section 1-5-5.6 NMSA 1978. The county clerk shall coordinate with the chief executive officer or designee of the Indian nation, tribe or pueblo to determine the location of the alternate site.

**B. Staffing of alternate site.** The county clerk shall ensure that adequate interpreters are available at the alternate site who can speak the language or languages of the Indian nation, tribe or pueblo on whose land the alternate site is located, and who can provide information in that language to voters concerning the voting process, voting requirements, and the candidates and issues on the ballot so as to allow voters to make informed decisions concerning how they wish to vote.

**C. Hours for operating alternate site.** Except as provided in this subsection, pursuant to Section 1-6-5.7 NMSA 1978, beginning on the third Saturday before election day, an alternate site shall be open for voting from noon to 8 p.m. on Tuesdays through Fridays and 10:00 a.m. to 6 p.m. through the Saturday immediately preceding the election. A county clerk may request and the secretary of state may grant a modification of these hours of operation from the secretary of state because of a hardship arising from inadequate facilities, difficulties with making appropriate personnel available or other exigent circumstances, provided the county clerk justifies in writing to the secretary of state the need for a modification.

**D. Early voting procedures at alternate sites.** Except as otherwise provided by law, county clerks shall use the same procedures for voting at alternate sites that are used at early voting sites not situated on the land of an Indian nation, tribe or pueblo.  
[1.10.30.9 NMAC - N/E, 10-31-08]

**1.10.30.10 ACTION IN THE ABSENCE OF A REQUEST:**

**Establishment of alternate site.** If, prior to the start of registration for voting, the county clerk for a county in which an Indian nation, tribe or pueblo is located and whose boundary is located more than fifteen miles from the office of the county clerk has not received a request from the Indian nation, tribe or pueblo for an early voting site, the county clerk is encouraged to contact the appropriate authority for the Indian nation, tribe or pueblo concerning arranging for an

alternate site.

[1.10.30.10 NMAC - N/E, 10-31-08]

**1.10.30.11 VOTING SUPPORT FOR MEMBERS OF INDIAN NATIONS, TRIBES OR PUEBLOS:**

**A. Voting materials in Native American languages.** County clerks in counties covered under 42 U.S.C. Section 1973aa-1a(b) shall provide all registration and voting notices, forms, instructions, assistance, and other information relating to the electoral process in the language or languages of the applicable Indian nation, tribe, or pueblo.

**B. Dissemination of voting information through the media.** If a minority language is historically unwritten, county clerks in counties covered under 42 U.S.C. Section 1973aa-1a(b) shall orally disseminate information relating to the electoral process, including voting procedures and ballot information, in the language of the applicable minority group through public service announcements on radio or television. The public service announcements shall be broadcast during daylight hours on radio and television stations available in the areas where the Indian nations, tribes or pueblos being targeted are located.

**C. Staffing of polling places on election day.** The county clerk shall ensure that adequate interpreters are available at election-day polling places situated on the lands of Indian nations, tribes or pueblos. The interpreters shall be able to speak the language of the relevant Indian nation, tribe or pueblo, and shall provide information to voters in the relevant language about the voting process, voting requirements and the candidates and issues on the ballot, so as to allow voters to make informed decisions concerning how they wish to vote. The number of interpreters available shall be adequate to accommodate voters who need to use the respective Indian language effectively to cast their ballots.  
[1.10.30.11 NMAC - N/E, 10-31-08]

**HISTORY OF 1.10.30 NMAC:**  
[RESERVED]

**NEW MEXICO SPEECH-  
LANGUAGE PATHOLOGY,  
AUDIOLOGY AND  
HEARING AID  
DISPENSING PRACTICES  
BOARD**

This is an amendment to 16.26.2 NMAC, Section 10, 11, 12, 13, and 18, effective 11/29/08.

**16.26.2.10 APPLICATIONS FOR LICENSURE:** Application shall be made on forms prescribed by the board office.

**A.** All applications for licensure must be accompanied by a check or money order payable to the board in the amount of the application and initial licensing fee. The licensing and renewal fee are set by the board and are non-refundable.

**B.** All initial applications must be signed by the applicant ~~[and sworn to by the applicant before a notary public].~~

**C.** All applications must be accurate.

**D.** All applications must be complete before they will be accepted by the board office.

[16.26.2.10 NMAC - Rp, 16 NMAC 26.3.8, 2/3/06; A, 11/29/08]

**16.26.2.11 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST:** Application for licensure as a speech-language pathologist must be accompanied by the following documents:

**A.** official transcripts verifying at least a master's degree in speech-language pathology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name; or

**B.** a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

**C.** a certified copy of a certificate of clinical competency from a board recognized national speech-language association or proof of completion of the clinical fellowship year or equivalent; and

**D.** proof of having passed a nationally recognized standard examination in ~~[either]~~ speech-language pathology;

**E.** passing the jurisprudence examination with a grade of no less than 70 %; and

**F.** if currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction.

[16.26.2.11 NMAC - Rp, 16 NMAC 26.2.11, 2/3/06; A, 11/29/08]

**16.26.2.12 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS A ~~[SPEECH-LANGUAGE PATHOLOGIST AND] NONDISPENSING AUDIOLOGIST:~~** Application for licensure as a ~~[speech-language pathologist or]~~ audiologist must be accompanied by the following documents:

**A.** official transcripts verifying at least a master's degree in ~~[speech-language pathology,]~~ audiology, ~~[speech-language and hearing science,]~~ or communication disorders or equivalent degree ~~[regardless of degree name; or]~~ in audiology or communication disorders awarded prior to January 1, 2007; or a doctoral degree in audiology or equivalent degree regardless of degree name; and

**B.** a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

**C.** a certified copy of a certificate of clinical competency from a board recognized national speech-language association or proof of completion of the clinical fellowship year or equivalent; and

**D.** proof of having passed a nationally recognized standard examination in ~~[either speech-language pathology or]~~ audiology ~~[or both];~~

**E.** passing the jurisprudence examination with a grade of no less than 70%; and

**F.** if currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction.

[16.26.2.12 NMAC - Rp, 16 NMAC 26.3.9, 2/3/06; A, 11/29/08]

**16.26.2.13 QUALIFICATIONS AND APPLICATION FOR ENDORSEMENT TO DISPENSE HEARING AIDS BY AUDIOLOGIST OR OTOLARYNGOLOGIST:** A licensed audiologist or otolaryngologist may apply for hearing aid dispensing endorsement by providing evidence satisfactory to the board of:

**A.** six months experience in the dispensing of hearing aids through practical examination, a notarized letter from an employer, graduate training program, or a clinical fellow supervisor verifying the required six months;

**B.** maintains or occupies in New Mexico a business location, hospital, clinical medical practice or other facility where hearing aids are regularly dispensed and records may be examined;

**C.** passes the jurisprudence examination, ~~[which is part of the application]~~ with a grade of no less than

70%; and

**D.** certifies that the applicant is not guilty of any activities listed in Section 61-14B-21 NMSA 1978.

[16.26.2.13 NMAC - Rp, 16 NMAC 26.3.10, 2/3/06; A, 11/29/08]

**16.26.2.18 TEMPORARY PARAPROFESSIONAL LICENSURE AS AN APPRENTICE IN SPEECH-LANGUAGE (ASL):**

**A.** Prerequisite requirements:

(1) Acceptance of a temporary paraprofessional licensee as an apprentice in speech-language is subject to board approval. Such licensees shall:

(a) be working towards a license pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(b) certify that he/she is not guilty of any activities listed in Section 61-14B-21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act; and

(c) provide proof of having met educational, supervision, and employment requirements.

(2) It is the responsibility of the apprentice in speech-language and the supervising speech-language pathologist to insure the distinction between the roles of the apprentice in speech-language and the graduate student.

**B.** Educational requirements:

(1) a baccalaureate degree in communication disorders or baccalaureate degree in another field with thirty (30) semester hours of credit in communication disorders;

(2) enrolled in a master's degree program in speech-language pathology or communication disorders and completes a minimum rate of nine (9) semester hours per year of graduate courses in communication disorders per year; or

(a) if not accepted into a master's degree program in speech-language pathology or communication disorders enrolled in and completes nine (9) semester hours of graduate courses per year with at least three (3) hours in communication disorders, six (6) hours may be taken in a related field;

(b) if the educational institution does not permit students who are not matriculated into a graduate program to take graduate courses in communication disorders, the student may substitute three (3) hours in a related field for the three (3) hours in communication disorders, in addition to the other six (6) hours in a related field;

(c) acceptance in a master's degree program must take place within two (2) years of initial license; and

(3) maintains a minimum of a 3.0 GPA in communication disorders course work and/or master's degree program.

C. Supervision requirements:

(1) Work of the apprentice in speech-language must be supervised by a speech-language pathologist licensed by this act and who has a minimum of two years experience in the field.

(a) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be direct supervision.

(b) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be indirect supervision.

(2) It is recommended that the speech-language pathologist's and audiologist's direct caseload size be limited to no more than 40 clients.

(a) A speech-language pathologist may supervise a maximum of three apprentices at one time.

(b) The supervising speech-language pathologist is expected to appropriately reduce their direct caseload for each apprentice they supervise, ensuring the maintenance of high professional standards as stated in the code of ethics.

(c) It is the responsibility of the supervising speech-language pathologist and the apprentice in speech-language to ensure the distinction between the roles of the apprentice in speech-language and the graduate student.

~~[(3) It is the responsibility of the supervising speech-language pathologist and the apprentice in speech-language to ensure the supervision reports are submitted every four months during the licensure period.]~~

D. Employment requirements:

(1) Terms of employment must require at least a temporary paraprofessional license as an apprentice in speech-language. The role of the apprentice in speech-language shall be determined in collaboration with the supervising speech-language pathologist (SLP) and the employer.

(2) Employment duties must be limited to the following:

(a) conduct speech-language and/or hearing screenings;

(b) conduct treatment programs and procedures that are planned, selected and/or designed by the supervising SLP;

(c) prepare written daily plans based on the overall intervention plan designed by the supervising SLP;

(d) record, chart, graph, or otherwise display data relative to the client performance and report performance changes to the supervising SLP;

(e) maintain daily service/delivery treatment notes and complete daily

charges as requested;

(f) report but not interpret data relative to client performance to teachers, family, or other professionals;

(g) assist the speech-language pathologists during assessment of clients, such as those who are difficult to test;

(h) perform clerical duties, including maintenance or therapy/diagnostic material/equipment, client files, as directed by the SLP supervisor;

(i) participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

E. Employment duties must not include any of the following:

(1) administer diagnostic tests;

(2) interpret data into diagnostic statements or clinical management strategies or procedures;

(3) select or discharge clients for services;

(4) interpret clinical information including data or impressions relative to client performance;

(5) treat clients without following the individualized treatment plan;

(6) independently compose clinical reports except for progress notes to be held in the client's file;

(7) refer a client to other professionals or agencies;

(8) provide client or family counseling;

(9) develop or modify a client's individual treatment plan: IEP/IFSP/ clinical report or plan of care in anyway without the approval of the SLP supervisor;

(10) disclose clinical or confidential information;

(11) sign any formal documents without the supervising SLP co-signature;

(12) represent himself/herself as a speech-language pathologist.

F. Documentation required: All applicants for temporary paraprofessional license as an apprentice in speech-language are required to provide the following documentation to the board each year:

(1) a completed board approved license application form, signed in the presence of a notary public;

(2) the required license application fee; and

(3) a completed board approved verification of employment form verifying:

(a) applicant's employment;

(b) performance responsibilities of the apprentice in speech-language;

(c) limitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);

(d) provision for supervision by

an SLP licensed according to this act.

(4) a completed board approved verification of education form verifying:

(a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;

(b) current degree plan once the applicant is admitted to a master's degree program; and

(c) official copy of transcripts from college or university.

[16.26.2.18 NMAC - Rp, 16 NMAC 26.2.15, 2/3/06; A, 11/29/08]

## NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.4 NMAC, Section 8, and 10, effective 11/29/08.

### 16.26.4.8 ANNUAL RENEWAL OF LICENSES:

A. Section 8 requires all licensees except clinical fellows and apprentices to apply for license renewal on or before January 30 on the renewal forms supplied by the board office. The renewal requirements for clinical fellows and apprentices are set forth in Sections 9 and 10 of this part.

B. Licensees shall assume the total responsibility for:

(1) filing a current mailing address with the board office;

(2) completing the renewal form ~~[(the application must be signed by the licensee)]~~ and ensuring its delivery to the board office on or before January 30;

(3) enclosing the appropriate fee; and

(4) enclosing documentation of meeting continuing education requirements.

C. To assist in the renewal process, the board office will:

(1) mail renewal notices and the appropriate forms to the licensee's address of record on or before December 15; and

(2) mail renewed and reinstated licenses no later than 30 days from day of receipt of application, fees and appropriate documentation.

D. Expiration: All speech-language pathology, audiology and hearing aid dispensing licenses expire on January 30 of each year and renewal forms must be complete and postmarked no later than the expiration date or a late fee will be assessed without exception.

E. Grace period: There is a

grace period permitted renewal of expired licenses which ends March 31 of the intended licensure year.

**F.** Renewal of license during the grace period ending March 31 of the intended license year will require a late fee. Individuals renewing during the grace period may not practice with the expired license.

**G.** If a licensee fails to renew within the grace period, the licensee must reapply as a new applicant, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.

**H.** Licensees shall be notified by the board office of all license expirations ten (10) days after the close of the grace period.

**I.** Timely renewal of license(s) is the full and complete responsibility of the licensee. Pursuant to Subsection C of 16.26.4.8 NMAC of these regulations, renewal forms are mailed to the licensee at address on record no later than December 15. If the renewal form is not received by the licensee within a reasonable time after December 15, it is the responsibility of the licensee to contact the board office. Non-receipt of the renewal form by the licensee will not exempt licensure expiration or late penalty fees.

[12/21/71; 2/5/80; 4/5/83; 11/9/96; 11/7/98; 11/27/99; 16.26.4.8 NMAC - Rn & A, 16 NMAC 26.4.8, 2/3/06; A, 11/29/08]

#### **16.26.4.10 RENEWAL OF TEMPORARY PARAPROFESSIONAL LICENSE (APPRENTICE IN SPEECH-LANGUAGE PATHOLOGY):**

**A.** All temporary paraprofessional licensees shall apply for license renewal on or before ~~July~~ August 30th and are required to provide the following documentation to the board each year:

(1) a completed ~~[board approved license application]~~ renewal form ~~[signed in the presence of a notary public];~~

(2) the required license renewal fee; and

(3) a completed board approved verification of employment form verifying:

(a) licensee's employment;

(b) performance responsibilities of the apprentice in speech-language;

(c) imitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);

(d) provision for supervision by an SLP licensed according to this act;

(4) a completed board approved verification of education form verifying:

(a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;

(b) current degree plan once the licensee is admitted to a master's degree program; and

(c) copy of transcripts from college or university.

**B.** Expiration: All temporary paraprofessional licenses expire on ~~July~~ August 30th of each year and renewal of licenses must be postmarked no later than the expiration date or a late fee will be assessed without exception.

**C.** A temporary paraprofessional license may not be renewed if the licensee has not been accepted into a master's degree program within two years of initial licensure.

**D.** If a licensee fails to renew within sixty (60) days, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.

**E.** Temporary paraprofessional license as an apprentice in speech-language is a terminal license and as such may be renewed no more than five times total.

[11/7/98; 11/27/99; 16.26.4.10 NMAC - Rn & A, 16 NMAC 26.4.10, 2/3/06; A, 11/29/08]

### **NEW MEXICO SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD**

This is an amendment to 16.26.5 NMAC, Section 9, 11, and 12, effective 11/29/08.

#### **16.26.5.9 CONTINUING EDUCATION REQUIREMENTS OF LICENSEES:**

**A.** ~~[Continuing education is a prerequisite to annual license renewal. Each licensee must participate in professional education activities of at least ten (10) clock hours every year.]~~ The board will require twenty (20) hours of continuing education every two years. These may be distributed over the two year period, or they may all be obtained in one year. These continuing education hours must be in the field of his or her licensure, or in a related field if justified to the board office. The board office will consult with the board and/or with the New Mexico speech-language and hearing association (or similar statewide professional association) to resolve questions as to appropriate continuing education hours. Renewal of a license shall be contingent upon the fulfillment of the continuing education standards and the supplying of

evidence thereof by the licensee. The board shall be the final authority on acceptance of any educational activity submitted by a licensee to meet the continuing education requirement.

**B.** ~~[Upon renewal or reinstatement of a license, a minimum of ten (10) clock hours of continuing education must be accrued within the twelve (12) months immediately preceding the license expiration date. A maximum of ten (10) clock hours accrued over the required number may be carried over to the next renewal period.]~~

~~C.]~~ The number of continuing education hours required for renewal of a license may be prorated by the board office.

(1) A newly licensed individual or a person who reinstates his or her license and whose next renewal date occurs less than twelve (12) months after the license is issued will be required to earn continuing education hours equivalent to one (1) hour per month each month the license is issued or reinstated to the last day of the renewal month up to a maximum of ten (10) clock hours.

(2) Any approved continuing education hours accrued prior to receiving a license during the year the license is issued can be applied toward the continuing education requirements.

~~D.]~~ **C.** Any person licensed as both a speech-language pathologist and an audiologist or hearing aid dispenser must fulfil the requirements of ~~ten (10)~~ twenty (20) clock hours of continuing education every ~~year~~ two years in the field in which they are actively practicing.

[2/5/80; 8/4/81; 11/9/96; 16.26.5.9 NMAC - Rn & A, 16 NMAC 26.5.9, 2/3/06; A, 11/29/08]

#### **16.26.5.11 CONTINUING EDUCATION VERIFICATION:**

~~[Licensees must attach each course offering to the renewal application form in the manner requested by the board.]~~

~~A.~~ The board will not retain copies of the verification forms once the continuing education activities are reviewed and approved.

**B.** Licensees are responsible maintaining their own continuing education records and keeping the verifications of attendance at continuing education activities. ~~The board will accept copies of continuing education attendance verifications at the time of license renewal.]~~ The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. The licensee should maintain a file that includes the continuing education course documentation up to two (2) years.

**A.** If a NOTICE OF



AUDIT letter is received with the annual renewal form, evidence of continuing education hours earned during the last two years must be submitted to the board as requested by this rule.

**B.** If the licensee is NOT AUDITED, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and all documentation of attendance and agendas should be retained by the licensee for a minimum of two (2) years immediately preceding the current renewal.

**C.** The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

**D.** Beginning January 30, 2009 the board will no longer allow carry over hours.

[11/9/96; 16.26.5.11 NMAC - Rn, 16 NMAC 26.5.11, 2/3/06; A, 11/29/08]

**16.26.5.12 [CONTINUING EDUCATION AUDIT:—**~~The board reserves the right to question an individual regarding continuing education submitted.~~

~~**A.** If audited, the licensee must provide a statement indicating how a continuing education activity has enhanced the licensee's scope of practice.~~

~~**B.** If the continuing education record is audited and the documents of verification of attendance are found to be falsified, incomplete, or if there is any question of accuracy, the licensee must submit other verification of attendance and/or correct the discrepancies before the last day of the renewal month to avoid license expiration and thereby assessment of the additional late penalty fee prior to reinstatement.]~~

~~[RESERVED]~~

~~[11/9/96; 16.26.5.12 NMAC - Rn & A, 16 NMAC 26.5.12, 2/3/06; Repealed, 11/29/08]~~

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**End of Adopted Rules Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2008

<b>Volume XIX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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

<b>Volume XX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
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