

**NEW
MEXICO
REGISTER**

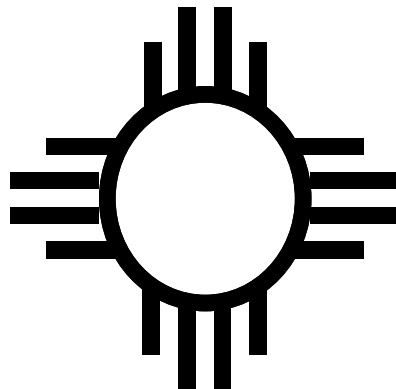


Volume XVII
Issue Number 13
July 17, 2006

New Mexico Register

Volume XVII, Issue Number 13

July 17, 2006



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
2006

COPYRIGHT © 2006
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVII, Number 13

July 17, 2006

Table of Contents

Notices of Rulemaking and Proposed Rules

Psychologist Examiners, Board of

Legal Notice: Public Rule Hearing and Regular Board Meeting. 661

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Administrative Office of the Courts

22.50.1 NMAC R Education and Training: General Provisions 663
22.50.10 NMAC R Magistrate Courts - Judges 663
22.50.12 NMAC R Municipal Courts - Judges 663
22.50.15 NMAC R Probate Courts - Judges 663
22.50.17 NMAC R Domestic Violence Special Commissioners and Domestic Relations Hearing
Officers 663
22.50.20 NMAC R Magistrate Court - Magistrate Judges Pro Tempore 663

Finance and Administration, Department of

Board of Finance

2.60.4 NMAC A Depository Bank Requirements, Collateral Level Requirements, and Custodial
Bank Requirements. 663

Human Services Department

Income Support Division

8.102.120 NMAC A Cash Assistance Programs: Eligibility Policy - Case Administration 664
8.102.400 NMAC A Cash Assistance Programs: Recipient Policies - Defining the Assistance Group 665
8.102.420 NMAC A Cash Assistance Programs: Recipient Policies - Special Recipient Requirements 669
8.102.500 NMAC A Cash Assistance Programs: Eligibility Policy - General Information 674
8.102.611 NMAC A Cash Assistance Programs: Education Works Program 676
8.106.500 NMAC A State Funded Assistance Programs: Eligibility Policy - General Information 677

Public Records, Commission of

1.19.6 NMAC R LGRRDS, Office of the County Treasurer 677
1.19.6 NMAC N LGRRDS, Office of the County Treasurer 677
Letter Synopsis Approval Letter 680
1.18.333 NMAC A ERRDS, Taxation and Revenue Department (*synopsis*) 680
1.18.667 NMAC A ERRDS, New Mexico Environment Department 681
1.18.790 NMAC A ERRDS, Department of Public Safety 682

Public Regulation Commission

Transportation Division

18.60.2 NMAC R Pipeline Safety 682
18.60.2 NMAC N Pipeline Safety General Provisions 682
18.60.4 NMAC N Pipeline Safety Enforcement Procedures 683
18.60.5 NMAC N Pipeline Safety Excavation Damage Prevention 686

Regulation and Licensing Department

Construction Industries Division; Hoisting Program

16 NMAC 43.2 R Hoisting Operators Safety. 691
16.43.2 NMAC N Hoisting Operators Safety; Hoisting Operators Code 691

Other Material Related to Administrative Law

Agriculture, Department of

Public Meeting Notice 701

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Psychologist Examiners Board will hold a Rule Hearing on August 17, 2006. Following the Rule Hearing the New Mexico Psychologist Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The Rule Hearing will begin at 9:00 a.m. The meetings will be held at the City of Las Cruces' new meeting venue Club Fusion, 101 East Union Street, Las Cruces, New Mexico.

The purpose of the rule hearing is to hear public testimony and comments regarding the proposed revisions to the rules and regulations: 16.22 NMAC: Part 1 General Provisions, Part 2 Code of Conduct, Part 3 Non-Licensed Psychologist/Applicant with an Independent Mental Health License, Part 4 Educational Requirements for Psychologists, Part 5 Application Procedures and Requirements for Licensure as a Psychologist, Part 6 Pre-Doctoral and Post-Doctoral Supervised Experience, Part 7 Examination Requirements, Part 8 License Expiration and Renewal, Part 9 Continuing Professional Education Requirements, Part 10 Inactive Status and Reinstatement, Part 11 Complaint Procedures and Adjudicatory Proceedings, Part 12 Educational Requirements and Conditions of Practice for Psychologist Associates, Part 13 Fees, Part 20 Health Care Practitioner Collaboration Guidelines, Part 21 Limits of Practice, Part 22 Prescribing Psychologist: Application Committee, Part 23 Requirements for Educational and Conditional Prescription Certificate, Part 24, Application Procedures: Two-Year Supervised Practice, Part 25 Application for Prescription Certificate: Peer Review, Part 26 Graduates of the Department of Defense: Psychopharmacology, Part 27 Psychologist and Psychologist Associates Formulary, Part 28 Prescribing Psychologists: Complaint Procedures, Part 29 Educational and Certificate Renewal.

To request draft copies of the proposed rule revisions, beginning on July 17, 2006, please call (505) 476-4657 or (505) 476-4607, or retrieve them from the web site,

www.rld.state.nm.us/b&c/psychology.

Persons desiring to present their views on the proposed rules may mail, e-mail or hand-deliver them to the Board office, located in the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504. In order for the Board members to review the comments in their meeting packets prior to the meeting, the deadline for submitting comments is August 9, 2006. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4607 at least two weeks prior to the meeting or as soon as possible.

Jackie Holmes, Board Administrator
PO Box 25101- Santa Fe, New Mexico
87504

**End of Notices and
Proposed Rules Section**

This page intentionally left blank.

Adopted Rules

NEW MEXICO ADMINISTRATIVE OFFICE OF THE COURTS

The Administrative Office of the Courts is repealing the following rules effective July 17, 2006.

22.50.1 NMAC, General Provisions, filed 7-8-2005.

22.50.10 NMAC, Magistrate Courts - Judges, filed 7-8-2005.

22.50.12 NMAC, Municipal Courts - Judges, filed 7-8-2005.

22.50.15 NMAC, Probate Courts - Judges, filed 7-8-2005.

22.50.17 NMAC, Domestic Violence Special Commissioners and Domestic Relations Hearing Officers, filed 7-8-2005.

22.50.20 NMAC, Magistrate Court - Magistrate Judges Pro Tempore, filed 7-8-2005.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

This is an amendment to 2.60.4 NMAC, Sections 3, 8, 9, 11 and 12, effective 8-1-2006.

2.60.4.3 STATUTORY AUTHORITY:

A. Section 6-1-1 Part E NMSA 1978 states that the state board of finance has general supervision of the fiscal affairs of the state and of the safekeeping and depositing of all money and securities belonging to or in custody of the state.

B. Section 6-10-10 Part C NMSA 1978 provides that the state treasurer may deposit money in one or more accounts with any bank, savings and loan association, or credit union whose deposits are insured by an agency of the United States to receive public money or deposits.

C. Section 6-10-16 and Section 6-10-16.1 NMSA 1978 provide for the type of securities of the United States and New Mexico, including surety bonds as provided in Section 6-10-15, to be used as collateral for deposits of public funds.

D. Section 6-10-17 NMSA 1978 provides that any financial institution designated as a depository of public money shall deliver securities to a custodial bank and shall deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom the public money is received for deposit.

E. Section 6-10-17.1

NMSA 1978 provides that when a depository bank has not maintained qualifying securities as collateral for deposits of public money, the treasurer or board shall request the depository to provide additional qualifying securities to meet those requirements within ten calendar days. If the financial institution does not comply, the board or treasurer shall withdraw all deposits of public money within the next ten calendar days.

E. Section 6-10-18 NMSA 1978, requires any financial institution designated as a depository of public money to enter into a written agreement to assure that collateral it pledges as security remains secure throughout the term of the designation.

[F]G. Section 6-10-20 NMSA 1978 provides that the board may at any time within its discretion require any depository financial institution to furnish additional security for deposit of the kind specified in Section 6-10-16 NMSA.

H. Section 6-10-21 NMSA 1978, authorizes the board to regulate the safekeeping of securities pledged as collateral by depository banks.

I. Section 6-10-24.1 NMSA 1978, bars the state treasurer from depositing public money in a financial institution in an amount that exceeds four hundred percent of the total equity capital in the case of banks or four hundred percent of the net worth in case of savings and loan associations, or twenty-five percent of the total of the financial institution's deposits, whichever is less.

[4-30-97; 2.60.4.3 NMAC - Rn & A, 2 NMAC 60.4.3, 11-15-2001; A, 8-1-2006]

2.60.4.8 [REQUIREMENTS TO BECOME] DESIGNATION OF AND REPORTING REQUIREMENTS FOR A DEPOSITORY BANK:

A. Financial institutions requesting to become a depository bank must submit the following information to the state treasurer:

(1) a letter from the financial institution requesting to become a depository bank;

(2) copy of federal deposit insurance corporation (FDIC) certification;

(3) financial reports for the preceding four quarters; newly chartered financial institutions must provide their most recent financial report.

B. Initial and continued appointment of financial institutions to serve as depository banks for the state of New Mexico is determined by the institution's risk assessment ratios and required collateral levels as specified in Section 2.60.4.9 below, and entry into and maintenance of a depository agreement consistent

with Section 6-10-18 NMSA 1978.

[4-30-97, 4-30-98; 2.60.4.8 NMAC - Rn & A, 2 NMAC 60.4.8, 11-15-2001; A, 8-1-2006]

2.60.4.9 COLLATERAL REQUIREMENTS FOR DEPOSITORY BANK SERVICES AS DETERMINED BY RISK ASSESSMENT RATIOS:

A. The board directs the state treasurer to conduct risk assessment analysis of financial institutions holding deposits of public money under the board's authority. The risk assessment will include a determination of each financial institution's primary capital-to-asset ratio, net operating income to total average asset ratio and non-performing loans to primary capital ratio for the past four consecutive quarters. These risk assessment ratios will determine collateral level requirements for financial institutions holding deposits of public money as listed below.

(1) If a financial institution's primary capital-to-asset ratio (as defined by the federal deposit insurance corporation (FDIC)) is:

(a) 6.1 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 5.0 percent to 6.0 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) less than 5.0 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

(2) If the financial institution's net operating income after taxes to its total average asset ratio is:

(a) .61 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) .51 percent to .60 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) less than .51 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit;

(d) a newly chartered financial institution is exempt from this ratio requirement for the first year of its operation; for the second year of operations, the financial institution shall annualize its net operating

income beginning with the first quarter of the second year; if this ratio is less than .61 percent, the state treasurer shall review the financial institution's financial condition and may request additional collateral.

(3) If the financial institution's non-performing loans (defined as loans which are at least 90 days past due and accruing or non-accruing) to the financial institution's primary capital ratio is:

(a) 34.9 percent or less, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit;

(b) 35.0 percent to 49.9 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit;

(c) greater than 49.9 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

B. Should the risk assessment ratios result in different levels of collateral for a financial institution, the state treasurer shall request the highest collateral level required.

C. Collateral levels shall be required until the risk assessment ratios of the financial institution return to a level which allows collateral to be kept at a lower level or at statutory minimum level as appropriate.

D. When making deposits in New Mexico financial institutions, the state treasurer shall not deposit any amount that, when added to state funds already on deposit in that financial institution, exceeds two hundred percent of the total equity capital in case of banks or two hundred percent of the net worth in the case of savings and loan associations or ten percent of the total of the bank's or the saving and loan association's deposits, whichever is less, unless and until the bank or savings and loan association has pledged and maintains collateral with an aggregate market value equal to one hundred percent of the aggregate amount on deposit. In no event shall the state treasurer deposit any amount that, when added to state funds already on deposit in that financial institution, exceeds four hundred percent of the total equity capital in case of banks or four hundred percent of the net worth in case of savings and loan associations or ten percent of the total of the bank's or the savings and loan association's deposits, whichever is less.

[4-30-97, 4-30-98; 2.60.4.9 NMAC - Rn & A, 2 NMAC 60.4.8, 11-15-2001; A, 8-1-2006]

2.60.4.11 DEPOSITORY BANK REPORTING OF RISK ASSESS-

MENT RATIOS AND COLLATERAL LEVELS TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for the depository bank shall be calculated from the quarterly call statements of the financial institution and from the state treasurer's generated report "New Mexico financial institution quarterly report". Both reports shall be furnished by the financial institution to the state treasurer no later than on the tenth day of the second month following the end of each calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. Depository banks shall submit a monthly collateral level report to the state treasurer on the state treasurer's generated report "state treasurer collateral compliance monthly report". If the tenth falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

C. The figures provided to the state treasurer by the financial institution shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the financial institution.

D. The state treasurer may, at any time between quarterly reporting periods, request any additional certified information from the financial institution as needed to assess the risk level of that financial institution.

[2.60.4.11 NMAC - N, 11-15-2001; A, 8-1-2006]

2.60.4.12 COLLATERAL LEVEL NON-COMPLIANCE:

A. If a financial institution is unable to meet the risk assessment qualifications for a minimum level of collateral required, the state treasurer is directed to cease making any additional deposits of public money into the financial institution and to withdraw deposits in the order they would otherwise mature to an amount which can be ~~collateralized~~ collateralized at an appropriate level of collateral in accordance with the risk assessment ratios.

B. If a financial institution that has been designated as a depository of public money has not maintained qualifying securities as collateral, the state treasurer shall request the financial institution to substitute or provide additional qualifying securities to meet those requirements within ten days. If the financial institution does not comply with the request within ten calendar days, the state treasurer shall withdraw from that financial institution within the next ten calendar days all deposits of public money under the state treasurer's

control without penalty.

C. The state treasurer is directed to require each financial institution that has had a final administrative enforcement action imposed upon it to advise the state treasurer of such action.

(1) If the state treasurer believes such action indicates a high level of risk in maintaining public deposits in that financial institution, the state treasurer shall report to the board and the board shall decide whether additional collateral shall be required.

(2) The state treasurer may make an emergency withdrawal of state deposits prior to maturity when such action is necessary in his judgment in the exercise of reasonable care to protect state funds.

(3) If the financial institution believes that exceptional circumstances exist which indicate that it is not appropriate for the state treasurer to take any action listed above:

(a) The financial institution shall appear at the next board meeting and present its position.

(b) The board shall at the time vote on whether an exception to this policy will be allowed.

D. The withdrawal of state deposits shall not be subject to the assessment of a penalty for early withdrawal except to the extent required to be imposed by federal law and in that event, only the minimum penalty required to be imposed shall be imposed by the financial institution.

E. Nothing herein shall restrict the state treasurer or the board from the lawful exercise of rights and duties conferred upon them by law.

[2.60.4.12 NMAC - N, 11-15-2001; A, 8-1-2006]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.120 NMAC, Section 9, effective July 17, 2006.

8.102.120.9 ELIGIBILITY REVIEWS

A. Follow-up reviews:

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

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

(3) Circumstances which may require follow-up review include, but are

not limited to:

(a) in NMW, exemption from work requirements;

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

~~(e)~~ school attendance of children age 6 or older;

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

B. Recertification:

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

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

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

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

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

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

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

C. Certification scheduling:

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

time the food stamp certification is completed.

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

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

(i) every six months or less for: 002 - NMW, ~~[005 - GA, 008 - GA, 009 - GA]~~ 002 Education Works Program;

(ii) every 12 months for: 010 - state supplement for SSI recipients in residential care.

(iii) eight months for: 019 - RRP

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

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

D. Interview:

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

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

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

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

F. Exchange of information with SSA:

(1) If information received during any eligibility review indicates that a recipient of NMW or GA may be eligible for supplemental security income (SSI) benefits, (this includes children and adults who appear disabled, and needy adults over 65),

the caseworker shall promptly refer the recipient to the social security administration district office for application. An individual found eligible for SSI must participate in that program.

(2) During the review process, the caseworker will sometimes learn information relevant to the eligibility of a family member who is a SSI recipient. If there is a clear indication that a SSI recipient's countable income exceeds the maximum allowable under the SSI program, the discrepancy shall be reported to the social security administration (SSA) district office. SSA shall also be notified when it appears that the resources of an SSI recipient exceed SSI program standards.

[8.102.120.9 NMAC - Rp 8.102.120.9 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 7/17/2006]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.400 NMAC, Sections 9, 12, 14 and 15, effective 7/17/2006.

8.102.400.9 BASIS FOR DEFINING THE BENEFIT GROUP:

A. The request for assistance is the first step in determining which individuals must be included in the benefit group. Within the constraints of law and policy, the decision as to which individuals are included in the benefit group is made by the head of household. A decision to request assistance for a specific individual may require the inclusion of other individuals as well.

B. The head of household may, subject to certain limitations, request the addition or deletion of an individual included in the benefit group. ISD shall consider adding or deleting members to the benefit group when the head of household requests it. ISD shall delete a person from the benefit group upon request of the head of household, except when the individual is a mandatory benefit group member.

C. The head of household is required to apply for any person who is a mandatory benefit group member. Failure to file an application for a mandatory benefit group member shall result in ineligibility for the entire benefit group.

D. Changes in family circumstances may affect who must be included in the benefit group. Any change in family circumstances shall be reviewed to ensure that all mandatory members are included in the benefit group.

E. Unborn children are not eligible for inclusion in the benefit group. The needs of an unborn shall be taken into

consideration in determining eligibility but not for payment to the benefit group.

F. Special provisions apply concerning eligibility and payment to pregnant women with no dependent children.

G. There may be more than one benefit group in a residence.

H. Benefit groups containing dependent children:

(1) NMW cash assistance benefit group: The benefit group for the NMW cash assistance program consists of a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with dependent child's parent or relative within the fifth degree of relationship and the parent with whom the children live and the spouse of a parent.

~~[(2) GA dependent child benefit group: The benefit group for the dependent child segment of the general assistance program consists of the dependent child. The non-relative caretaker and spouse of the caretaker, if the spouse is living in the home, are considered deacons.]~~

~~[(3)] (2) Constructing the NMW dependent child benefit group:~~

(a) Dependent children: Include the natural children, adopted children, or stepchildren who are 17 years of age or younger or who are 18 years of age and enrolled in high school.

(b) Parents: The natural or adoptive parent(s), stepparent, or legal guardian of any child for whom assistance has been requested who lives in the home with the child must be included.

(c) Spouse: Include the spouse of any adult or minor head of household who is included in the benefit group.

(d) Optional member:

(i) any unrelated dependent child living in the home;

(ii) the specified relative who is the caretaker and who is within the fifth degree of relationship and the specified relative's spouse, if the parent is not living in the home.

~~[(4) Constructing the GA dependent child benefit group:~~

~~**(a) Dependent children:** To be included in a GA dependent child benefit group, the child must be living in a family setting with a non-related adult. The non-related adult is referred to as a caretaker.~~

~~**(b) Non-relative caretaker:** Include the income on a pro rata basis of the non-relative caretaker of any child for whom assistance has been requested who lives in the home with the child.~~

~~**(c) Spouse:** Include the income on a pro rata basis of the spouse of the non-relative caretaker, if living in the home.~~

~~**I. Adult only benefit groups:**~~

~~**(1) General assistance (GA):**~~

~~**(a) Constructing the benefit group:** The benefit group for the disability segments of the GA program consists of the disabled individual and the disabled individual's spouse. The disabled individual's needs are considered when determining payment. The spouse may be included when determining need and payment, provided the spouse is also disabled or is considered to be an essential person.~~

~~**(b) Limitations:** An individual shall not be included in a GA benefit group if the individual:~~

~~**(i)** must be included in a NMW benefit group as a mandatory member; or~~

~~**(ii)** would be included in a NMW benefit group except that the individual is ineligible for NMW because the individual has failed to comply with NMW work program or child support requirements or because the individual meets NMW disqualification resulting from program fraud, drug abuse, or fleeing felon status; or~~

~~**(iii)** has been denied or terminated SSI benefits because of failure to meet SSI substance abuse treatment requirements or who has been determined ineligible for SSI because of program fraud; or~~

~~**(iv)** would be eligible for inclusion in a NMW benefit group but is ineligible because of residence in the individual's tribal TANF service delivery area.~~

~~**(2) Refugee assistance:** The refugee benefit group is constructed according to NMW requirements.~~

~~**(3) State supplement:** The benefit group consists of the SSI recipient. Two SSI recipients who would constitute a family if living at home, but who reside in an adult residential shelter care facility, are considered to be two separate benefit groups.~~

~~**(4) NMW:** An adult only benefit group may consist of:~~

~~**(a)** a parent or relative, and the spouse of the parent or relative, when all of the dependent children are receiving SSI;~~

~~**(b)** a pregnant woman in her last trimester of pregnancy who has no dependent children living with her and the father of the unborn child, if he is living in the home.~~

~~**J. Burial assistance:** The benefit group consists of the deceased person.]~~

~~**I. NMW Adult only benefit groups:** An adult only benefit group may consist of:~~

~~**(1)** a parent or relative, and the spouse of the parent or relative, when all of the dependent children are receiving SSI;~~

~~**(2)** a pregnant woman in her third trimester of pregnancy who has no dependent children living with her and the father of~~

~~the unborn child, if he is living in the home. [8.102.400.9 NMAC - Rp 8.102.400.9 NMAC, 07/01/2001; A, 7/17/2006]~~

8.102.400.12 SPECIAL MEMBERS

A. Minor unmarried parents:

(1) A minor unmarried parent and child who live with the minor unmarried parent's parent or other adults shall be included as dependent children in the larger NMW benefit group if there is one. A minor unmarried parent and child living with parent(s) may constitute a benefit group in their own right if the minor parent is the primary caretaker for the child and the parent(s) are not receiving NMW. The minor parent's parent shall be the applicant and payee for the benefit.

(2) Limitations regarding minor unmarried parents:

(a) Living arrangements: An unmarried minor parent and the dependent child in her care must reside in the household of a parent, legal guardian, or other adult relative unless:

(i) the child is living in a second-chance home, maternity home, or other appropriate adult-supervised supportive living arrangement which takes into account the needs and concerns of the minor unmarried parent;

(ii) the minor parent has no living parent or legal guardian whose whereabouts is known, and there are no other appropriate adult-supervised supportive living arrangements available;

(iii) no living parent or legal guardian of the minor parent allows the minor parent to live in the minor parent's home and there are no other appropriate adult-supervised supportive living arrangements available;

(iv) the minor unmarried parent is or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the home of the parent, legal guardian or other adult relative and there are no other appropriate adult-supervised supportive living arrangements available;

(v) there is substantial evidence of an act or failure to act that presents an imminent or serious harm to the minor unmarried parent and/or the child of the minor unmarried parent if they live in the same residence with the parent legal guardian or other appropriate adult and there are no other appropriate adult-supervised supportive living arrangements available; if a minor parent makes allegations supporting the conclusion that the physical or emotional health or safety of the minor unmarried parent or the dependent child(ren) will be jeopardized, the case-worker shall file any documentation regard-

ing this allegation in the case record and grant the exemption; acceptable documentation will include written reports and statements from the children, youth, and families department, other social service agencies, and police reports; if no written documentation exists, the caseworker should summarize the client's statement in a memo to ISD's deputy director for programs, and the deputy director shall base a decision on the caseworker's memo;

(vi) the department determines there is otherwise good cause for the minor parent and dependent child to receive assistance while living apart from the minor parent's parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement; an adult-supervised supportive living arrangement is defined as a private family setting or other living arrangement (not including a public institution), which is maintained as a family setting, as evidenced by the assumption of responsibility for the care and control of the minor parent and dependent child(ren) or the provision of supportive services, such as counseling, guidance, or supervision; for example, foster homes and maternity home are adult-supervised supportive living arrangements.

(b) Notification: Minor applicants shall be informed about the eligibility requirements and their rights and obligations under this manual section. Minor applicants shall be advised of the possible exemptions and specifically asked whether one or more of these exemptions applies in their situation.

(c) Payment: If the minor parent lives with an adult receiving NMW, the minor parent and child shall be included in that NMW benefit group. If the minor parent and the minor parent's dependent child(ren) do not live with an adult who is receiving NMW, payment is made to the supervising adult in the form of a protective payment.

B. Pregnant woman:

(1) A pregnant woman who has no minor dependent children living with her can constitute a NMW benefit group during her last trimester of pregnancy. The woman is eligible only if the child, were it born, would be living with her and would be eligible for NMW. The pregnancy must be verified by a medical report.

(2) The needs, income and resources of an unborn child shall be considered in the determination of eligibility for NMW. The needs of the unborn child are not considered in the amount of payment.

(3) Father living with the pregnant woman: The needs, income and resources of the father of the unborn child shall be considered in determining eligibility and payment if the father lives in the

home.

(4) A pregnant woman who has one or more dependent children living with her must meet the conditions of Subsection H of 8.102.400.9 NMAC; benefit groups containing dependent children.

C. Specified relative of SSI child: A specified relative whose only minor dependent child is an SSI recipient meets the requirement of living with a related minor child and constitutes a NMW benefit group. Other household members may also be included, subject to limitations set forth at 8.102.400.10 NMAC and 8.102.400.11 NMAC.

D. Essential person:

(1) A person who is considered essential to the well being of a disabled GA recipient may be included in the GA benefit group if:

(a) the disabled GA client is disabled to the extent that placement into institutional care would be required were it not for care provided by the essential person; and

(b) the essential person is capable of providing the physical care needed by the GA client.

(2) The essential person need not be related to the disabled person but must live with the disabled person.

(3) Resources and income belonging to the essential person shall be considered in determining eligibility for the benefit group.]

[8.102.400.12 NMAC - Rp 8.102.400.12 NMAC, 07/01/2001; A, 7/17/2006]

8.102.400.14 NMW LIVING ARRANGEMENTS - REQUIREMENTS:

A. NMW:

(4) **A.** For a NMW benefit group to exist, a dependent child must be living in the home of a parent or specified relative. The relative must be the primary caretaker for the child and must be within the fifth degree of relationship, as determined by New Mexico's Uniform Probate Practice Code (see Subsection A of 8.102.400.16 NMAC). To be considered as the caretaker, the specified relative in a NMW benefit group, the individual must be living, or considered to be living, in the home with the child.

(5) **B.** A child or the caretaker relative may in certain situations be temporarily domiciled away from home, but nonetheless be considered as living at home. Such situations result when the parent or caretaker relative has decided to domicile the child elsewhere because of a specific need identified by the parent or caretaker relative and provided that the parent or caretaker relative remains responsible for providing care and support to the child and retains parental control over the child.

(6) **C.** Standards used to determine whether an individual is within the specified degree of relationship are set forth in 8.102.400.16 NMAC.

(7) **D.** Standards used to determine whether a child lives in the home is set forth in 8.102.400.15 NMAC.

B. GA dependent child:

(1) To be included in a GA dependent child benefit group, the child must be living, or considered to be living, in the home of a person who is not a specified relative and who is not eligible for NMW in their own right. These non related persons are referred to as caretakers.

(2) Persons who claim relationship, but whose relationship has not yet been verified are not to be considered non-relatives for the purposes of the GA program and are not to be opened to GA while verification is pending. GA eligibility may be established if a decision is ultimately made that NMW relationship cannot be established so that the child shall not be eligible for NMW.

(3) To be considered a caretaker, an individual must be living, or considered to be living, in the home with the child.

(4) Standards used to determine whether a child is considered to be living in the home are set forth in 8.102.400.15 NMAC.

C. Refugee children: To be included in a refugee assistance benefit group, a child must be living with a specified relative, as provided for in 8.102.400.15 NMAC or, in the case of an unaccompanied minor, must be living with a non related caretaker who has assumed responsibility for the child as detailed in Subsection F of 8.102.400.15 NMAC.

D. Shelter care: In order to be included in the adult residential shelter care home assistance benefit group, the individual must be living in a facility licensed by the state of New Mexico as an adult residential shelter care facility.]

[8.102.400.14 NMAC - Rp 8.102.400.14 NMAC, 07/01/2001; A, 7/17/2006]

8.102.400.15 NMW LIVING IN THE HOME

A. Basic requirements:

(1) To be eligible for inclusion in the NMW cash assistance benefit group, the dependent child must live with a parent or a specified relative acting as the head of household. A child lives with an individual when the individual's home is the primary place of residence for the child, as evidenced by the child's customary physical presence in the home. The individual may or may not be the child's parent or caretaker. The following sections refer to caretaker. For the purposes of these provisions, the caretaker is the person taking primary responsibility for the care of the child. The

caretaker will be a parent, relative, or it may be an unrelated adult. The caretaker may or may not be the head of the household.

(2) The determination of whether a given individual functions as the parent/caretaker relative for NMW purposes shall be made by the client unless other information known to the worker clearly indicates otherwise.

B. Extended living in the home:

(1) Under the circumstances described in this section, a child may be physically absent from the home for periods of time, but, because of the nature of the absence and because the parent/caretaker relative continues to exercise parental control over and to provide care for the child during the time the child is physically away from the family's home, the child nonetheless remains a regular on-going member of the benefit group. Similarly, under certain circumstances, the caretaker could be physically absent from the home and still retain membership status as caretaker for purposes of eligibility.

(2) The circumstances where this occurs are:

(a) attending boarding schools or college and

(b) inpatient treatment in medical facilities; in order for either the child or the caretaker to retain living-in-the-home status, the person acting as the caretaker must retain responsibilities for providing care, support and supervision for the child which are appropriate to the child's specific living arrangements.

(3) In considering whether the caretaker retains care and support responsibilities for a child who is hospitalized or at school, issues which shall be reviewed include the degree to which the parent:

(a) provides financial support to the child from the financial assistance payment;

(b) continues to maintain living quarters for the child until the child reestablishes full-time physical presence in the home; and

(c) continues to make decisions regarding the care and control of the child(ren), including decisions about medical care and treatment, class scheduling, and other similar parental decisions;

(d) maintains contact with the child through regular visits or telephone calls.

(4) The determination whether living-in-the-home status is retained is fully discussed with the caretaker and carefully documented in the case record.

(a) **Boarding school:** A child or caretaker relative who is attending school away from home lives in the home if the caretaker relative retains primary responsibility for the child relative.

(b) Medicaid:

(i) **Caretaker:** A caretaker receiving treatment in a Title XIX facility remains a member of the benefit group of which the caretaker was a member at the time of hospitalization until the caretaker leaves the facility and returns to that home or some other. If the caretaker does not return to the home following hospitalization, the living-in-the-home requirement shall be reassessed.

(ii) **Dependent children:** For the purposes of the financial assistance program, a child hospitalized for care or treatment in a Title XIX (medicaid) facility retains living-in-the-home status, without regard to the length of hospitalization, provided that the caretaker continues to be the person with primary responsibility for control of the child and for meeting the child's physical and emotional needs. This includes children receiving treatment in acute care hospitals, freestanding psychiatric hospitals and rehabilitation hospitals as well as residential treatment centers and group homes reimbursed by medicaid for psychosocial rehabilitation services. Medical assistance division institutional care staff may be contacted to verify New Mexico medicaid provider status of RTCs and group homes.

(5) For a child to retain living-in-the-home status while receiving rehabilitation services, including psychosocial treatment services, certain conditions must be met. Treatment of the child is the primary objective, but the program should be family-based with one objective being strengthening of family ties. Treatment plans must provide for a significant level of continuing authority, responsibility, and participation by the caretaker. In order for children receiving treatment in a Title XIX facility to be "living in the home", the caretaker must retain the authority to decide when the child should leave the facility, grant authority for provision of necessary treatment, and retain responsibility for provision of pocket money, clothing, etc.

(6) A significant issue in determining whether a child retains living-in-the-home status is the authority of the caretaker to control the child's treatment and duration of stay. Under the state's mental health code, a court order placing the child in a psychiatric facility must be issued. The court findings serve to make sure that the child needs such treatment. Such orders do not prevent the specified relative from removing the child from the facility. These orders must be differentiated from correctional commitments or sentences. A child receiving treatment in a Title XIX facility, or placed in other substitute care living arrangements by juvenile authorities as the result of a sentence or commitment by a judicial authority does not meet the defini-

tion of actually living in the home, as the caretaker no longer has significant control over the child.

(7) A child may qualify for extended living-in-the-home provisions under these conditions:

(a) the child must have been living in the home before hospitalization;

(b) the child must have been living in the home before attending boarding school or college.

C. Joint custody: A child who is in the joint custody of divorced parents who are living apart and who is actually spending equal amounts of time with both parents shall not be considered to be living with the caretaker. If the divorce decree specifies equal joint custody, but the child is actually spending more time with one parent than the other, the child would be determined to be living with the parent with whom the child spends the most time.

D. Absence from the home:

(1) A minor child may remain in the benefit group and remain eligible for benefits for up to 45 days following the date of departure or expected absence from the home. However, such a child may not simultaneously be in another NMW or GA benefit group.

(2) A child shall be considered to have left the home, when the child is physically absent from the home and is under the care, control, custody, of himself, another relative or another adult, social services or correctional agency, or other agency of state, local, or tribal government.

E. Reporting departure of child from the home: Pursuant to Section 408 (a)(10)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the parent, relative, or caretaker of a minor child included in the NMW benefit group is ineligible to be included in the benefit group if the parent or relative or caretaker fails to report the absence from the home of a minor child who is a member of the benefit group. To be eligible, the adult must report the departure of the minor child by no later than 5 days after the adult becomes aware that the child is absent or will be absent in excess of the 45 days allowed under Subsection D of 8.102.400.15 NMAC. The adult shall remain ineligible for the number of months that the benefit group is sanctioned for non-reporting as provided for at 8.102.620.11 NMAC.

~~**F. GA Living in the home of the caretaker:** The GA dependent child program is intended to assist dependent children who are ineligible for NMW.~~

~~(1) To be included in the GA dependent child benefit group, the child must be living in a family setting with a non-related adult.~~

~~(a) who is not eligible for NMW in the adult's own right;~~

~~(b) who has assumed responsibility for supervision and care of the child and for meeting the child's physical and emotional needs; and~~

~~(c) who has demonstrated an intent to continue the parent child relationship and to provide a permanent home for the child.~~

~~(2) Standards used in NMW (Subsections A-D of 8.102.400.15 NMAC) shall be used in determining whether the GA child lives in a family setting.]~~

[8.102.400.15 NMAC - Rp 8.102.400.15 NMAC, 07/01/2001; A, 7/17/2006]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.420 NMAC, Sections 8, 11-13, 15-16, effective 7/17/2006.

8.102.420.8 AGE - NMW[~~GA CHILD~~] AND REFUGEE RESETTLEMENT: To be eligible for inclusion in the benefit group, a dependent child is:

A. NMW definition of a dependent child: A natural child, adopted child, stepchild or ward who is:

(1) seventeen years of age or younger;

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

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the [state board of education (SDE)] public education department (PED).

B. [GA child and] Refugee resettlement assistance: An individual who is seventeen years of age or younger.

[8.102.420.8 NMAC - Rp 8.102.420.8 NMAC, 07/01/2001, A, 05/15/2003; A, 7/17/2006]

8.102.420.11 DISABILITY - [GENERAL ASSISTANCE] NMW WORK PARTICIPATION DISABILITY REQUIREMENTS:

A. Temporary total disability: ~~To be eligible for GA based on a temporary total disability, an individual must have a physical or mental impairment, expected to last at least 30 days but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.~~

B. Permanent total disability: ~~To be eligible for GA based upon a permanent total disability, an individual must have a physical or mental impairment,~~

~~expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.~~

C. Gainful employment: ~~For purposes of GA disability determination, gainful employment includes any job or class of jobs available in the state as a whole which would provide an income equaling or exceeding the GA standard of need.~~

D. Loss of support: ~~To be considered disabled, an individual must previously have been self supporting, or must have lost support from:~~

~~(1) a deceased or absent spouse who supported the family before death or absence;~~

~~(2) benefits from some other program, such as NMW, VA, OASDI, SSI, etc.; or~~

~~(3) individuals other than the spouse who have previously supported the applicant, such as friends, children, parents, etc.]~~

A. To be eligible for a NMW work participation waiver based upon disability or caring for an incapacitated household member, a person must:

(1) have a physical or mental impairment which is expected to last 30 days or more which prevents participation in approved work program activities, or

(2) be the necessary primary caretaker for a person who is completely disabled, either temporarily or permanently, as determined by IRU in accordance with 8.102.460.11 NMAC.

B. A person may qualify for a modified NMW work participation requirements in accordance with 8.102.460 NMAC.

[8.102.420.11 NMAC - Rp 8.102.420.11 NMAC, 07/01/2001; A, 7/17/2006]

8.102.420.12 DETERMINING DISABILITY

A. Process:

(1) Total disability is a condition existing when an individual has a physical and/or mental impairment which prevents the individual from [employment in any position] approved work participation activities within the individual's capacity.

(2) Determination of disability requires a finding by the IRU that an individual, because of an impairment does not have the capacity for [employment, or, in the case of a homemaker, the capacity to perform necessary homemaking activities] meeting approved work participation activities.

(3) Once it has been determined that an individual has a physical, mental or psychological impairment, determination of capacity takes into consideration an individual's age, education, work experience,

vocational training, ability to speak English, and similar matters. These non-medical factors are generically referred to as "other work-related factors." Other work-related factors are considered in deciding whether employment exists which could be performed by the individual, given the individual's physical and/or mental impairment(s). Medical findings are evaluated to determine the level of activity the individual can perform.

~~[(4) There may be situations where a GA applicant or recipient is not found disabled based on the applicant's or recipient's employment capacity but cannot find or get a job within the applicant's or recipient's capacity. The GA program is not intended to be an unemployment or general relief program. A finding that an individual has the capacity to work should not be interpreted to mean that ISD believes that employment suitable to that individual is easily available in the individual's community or that the individual would obtain employment if it were. An individual's success in finding work within the individual's capacity neither adds to nor detracts from the disability determination. An impaired individual who has the capacity for work but who cannot find a job, is unemployed, but is not disabled.]~~

~~[(5)](4) The [GA] NMW disability determination is made independently of and using differing standards from those used for determining OASDI or SSI eligibility, general assistance, workman's compensation, veteran's compensation or in Americans with Disability Act (ADA) determinations. Medical and social information used by disability reviewers may differ between determinations, and an individual's condition may improve or worsen over time. As a result, an individual may be classified disabled by one program but not by another. [While disability standards for the GA program are less demanding than those of OASDI or SSI, a given individual may quite correctly be found ineligible for GA and yet found eligible for OASDI or SSI or another disability program.] A disability determination made for another program or purpose is immaterial to the [GA] NMW disability determination. [GA] NMW determinations shall be made considering only [GA] NMW policy and medical and non-medical information known to ISD.~~

B. Impairment:

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

obtained.

(1) Obtaining medical information:

(a) Record or narrative reports resulting from examination and/or diagnostic procedures shall be used to evaluate an impairment. ~~[The department shall pay for examinations by medical doctors; doctors of osteopathy or podiatry; ophthalmologists; and psychiatrists or psychologists. Applicants/recipients are encouraged to provide reports from other treatment providers, such as licensed counselors and chiropractors, if they have them. The department shall not pay for such reports.]~~

(b) Existing medical information or knowledge shall be used. ~~[If possible, an individual shall be referred to the individual's physician for medical examination.]~~ Copies of relevant existing medical reports shall be obtained and used in making a disability determination.

(c) Reports over six months old may be useful in a disability determination or to support a pattern of recurring impairment if they contain information regarding a chronic condition. Such reports are supporting documentation, but must be accompanied by current medical information.

(2) Contents of reports:

(a) For maximum usefulness, medical reports should include medical history; clinical findings; laboratory findings; diagnosis; prescribed treatment and prognosis; and the practitioner's medical assessment. The medical report must be complete and detailed enough to allow a determination of the limiting effects of the impairment; probable duration of the impairment; and capacity to perform work-related activities.

(b) Medical assessments should discuss abilities such as sitting, standing, moving, lifting, carrying, handling objects, hearing, speaking and traveling.

(c) Psychiatric assessments should discuss the individual's judgment and occupational, personal, and social adjustments.

~~[(d) An unsubstantiated statement of impairment shall not be adequate to establish disability. A statement in any report that an individual is disabled and cannot work shall not be a determining factor in making the disability determination, since providers are not trained in the program's disability standards.]~~

(3) Assessing medical reports:

(a) Symptoms shall be the first item to be evaluated. These are a description by the practitioner of the mental or physical impairment. Obvious impairments such as recent fractures do not require extensive reporting. Chronic or complex ailments require more extensive reporting. Symptoms alone shall not be used to make a determination of impairment.

(i) **Symptoms/signs:** Signs are the observations made by the practitioner regarding anatomical, physiological, or psychological abnormalities through medically acceptable clinical techniques. In psychiatric impairments, signs are medically demonstrable abnormalities of behavior, affect, thought, memory, orientation and contact with reality.

(ii) **Laboratory findings:** Laboratory findings are objective demonstrations of anatomical, physiological or psychological abnormalities. They include X-rays, blood tests, and psychological tests.

(b) The physical ability of the individual to do work at a certain level shall be assessed. Below are categories of work as defined in the "dictionary of occupational titles". Many physicians use these definitions in medical reports.

(i) **Sedentary work:** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and sedentary standards are met.

(ii) **Light work:** Light work involves lifting no more than 20 pounds at a time, with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category if it requires a good deal of walking or standing, or if it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. If an individual can do light work, it is assumed that he can also do sedentary work, unless there are additional limiting factors, such as loss of fine dexterity or inability to sit for long periods of time.

(iii) **Medium work:** Medium work involves lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds. If an individual can do medium work, it is assumed that the individual can also do sedentary and light work.

(iv) **Heavy work:** Heavy work involves lifting no more than 100 pounds at a time, with frequent lifting or carrying of objects weighing up to 50 pounds. If an individual can do heavy work, it is assumed that the individual can also do medium, light, and sedentary work.

(v) **Very heavy work:** Very heavy work involves lifting objects weighing more than 100 pounds at a time, with frequent lifting or carrying of objects weighing 50 pounds or more. If an individual can do very heavy work, it is assumed that the individual can also do heavy, medium, light and sedentary work.

C. Psychological impairment: If psychological impairment is being assessed, an individual's mental ability to function at one of the above-mentioned levels shall be evaluated in the following areas:

(1) **Judgment:** Individual's ability to exercise appropriate decision-making processes in a work situation consistent with the individual's abilities.

(2) **Stress reaction:** Individual's ability to handle stress consistent with the level of employment.

(3) **Cognitive function:** Individual's awareness, memory, intellectual capacity and other cognitive functions.

D. Determining duration of [impairment] NMW work participation waiver: The duration of the NMW work participation waiver shall be determined based on the nature of the impairment.

~~[(1) Determination of whether an individual has a temporary or permanent disability is based upon the duration of the impairment.]~~

~~(a) **Temporary disability:** The impairment is expected to last a minimum of 30 days from the date of determination of disability and less than 12 months.~~

~~(b) **Permanent disability:** The impairment is expected to last at least 12 months from the month of determination of disability.~~

~~(2) The duration may be determined by the nature of the impairment. Temporary and permanent impairments include, but are not limited to:~~

~~(a) **Musculoskeletal systems**~~

Temporary	Permanent
Spinal strain or sprain;	Amputation;
Fractured bones, arms, legs, ankles, ribs, etc.;	Deformities;
Carpal tunnel syndrome;	Degenerative joint disease;
	Herniated nucleus pulposus;

Myalgia; Fibrositis; Single incident osteomyelitis.-	Non-union fractures; Ankylosis; Osteo-rheumatoid arthritis; Recurrent osteomyelitis; Osteoporosis; Spinal scoliosis; Kyphosis.-
--	---

(b) Ophthalmological

Temporary	Permanent
Cataracts; Pterygiums; Decreased visual acuity that is correctable; Conjunctivitis; Ophthalmitis; Optic nerve disorders.-	Glaucoma; Diabetic retinopathy; Blindness; Vitreous hemorrhages.-

(c) Hearing disorders

Temporary	Permanent
Tinnitus; Otitis; Vertigo; Temporary hearing impairment.-	Total deafness; Corrected hearing loss with poor speed-discrimination.-

(d) Pulmonary disorders

Temporary	Permanent
Asthma; Bronchitis; Pneumonia; Dyspnea; Pleurisy;-	Emphysema; Tuberculosis; Chronic obstructive pulmonary disease; Chronic emphysema; Chronic asthmatic bronchitis; Pulmonary edema.-

(e) Heart disease

Temporary	Permanent
Aortic aneurysm; Arteriosclerosis; Arterial hypertension; Myocardial infarction; Angina pectoris; Transient ischemic attack; Cardiomyopathy.-	Rheumatic heart disease; Congestive heart failure; Cardiac decompensation; Cardiac arrhythmia; Valvular disorders; Myocardial infarction with residual impairment; Ischemic heart disease; Malignant hypertension.-

(f) Digestive system

Temporary	Permanent
Hiatus hernia; Esophageal disorders; Surgery for peptic ulcers; Hepatitis; Alcoholism;-	Cirrhosis; Alcoholic liver disease; Crohn's disease; Chronic hepatitis;-

Pancreatitis; Ulcerative colitis; Irritable bowel syndrome;- Non-insulin dependent diabetes;- Diverticulitis.-	Chronic pancreatitis; Inoperable cancer; Familial polyposis.-
--	---

(g) Neurological

Temporary	Permanent
Concussion; Cerebral laceration; Subdural hematoma; Migraine headache; Vertigo; Sleep disorder; Encephalitis; Aseptic meningitis; Delirium.-	Cerebral vascular disease; Spinal cord injuries; Peripheral neuropathy; Brain tumors; Multiple sclerosis; Epilepsy; Cerebral palsy; Muscular dystrophy; Parkinson's disease; Polio-myelitis.-

(h) Mental disorders

Temporary	Permanent
Personality disorder; Somatization disorder;- Drug and alcohol dependency;- Panic/anxiety attacks;- Depression;- Obsessive/compulsive disorder;- Conversion reaction;- Hypochondriasis;- Anorexia; Dementia.-	Schizophrenia; Psychosis; Neurosis; Manic depression;- Bipolar affective disorder; Mental retardation;- Organic brain syndrome; Alzheimer's disease.-

(3) In some circumstances, an impairment which is listed as temporary may be deemed permanent. For example, a fractured leg which would be considered a temporary impairment could become a permanent impairment if fusion has not taken place and is not expected to take place for a lengthy period. Conversely, in some circumstances, an impairment which is listed as permanent may be deemed temporary. For example, epilepsy which has been shown to be controlled by medication could be considered temporary.]

E. Other work-related factors:

(1) Other factors which may affect the individual's [employability] work participation shall be taken into consideration only if an impairment materially affecting the individual's [employability] work participation has been determined to exist. The case-worker shall develop and submit a summary describing the individual's health history, appearance, work and personal situation. For a finding of disability, a significant impairment must exist; a finding of disability cannot be made based solely on other work-related factors. Other work-related factors shall be used to evaluate the ability of the individual to engage in [employment] work participation with respect to the impairment. Such factors as age, education, training, work experience, language ability, appearance, marital status, living situation, and relevant social history shall be considered. Different evaluations of disability may be made for two individuals with the same impairment, based on the other [work-related] work factors affecting the individuals; i.e., one may be found to be disabled by the program definition and the other may not.

(2) In determining complete disability with respect to work program participation, partial disabilities and other work-related factors, such as education and educational achievements, work history, job experiences, and language ability, shall not be considered. While

these may present an impediment to obtaining employment, they are problems which can be overcome through work program participation. Where such impediments exist, the individual shall be expected to participate in activities which will overcome these barriers.

(a) Age: Age is a [key] factor in the determination process. The older an individual is, the less potential there is for overcoming an impairment. Recovery is more difficult and, often, total recovery may not be achieved. There may be very little chance that the individual will ever return to functioning effectively in the individual's previous job duties.

(b) Education: An individual's educational level is [an important] a factor in the determination process. An individual who lacks a high school degree or GED may be hampered in an ability to get a job that does not require strenuous effort. Education is defined at four levels:

(i) Illiteracy: Inability to read or write English. Illiterate individuals are considered suitable for the general labor work force.

(ii) Marginal: Eight years of education or less. Marginally educated individuals are considered suitable for the semi-skilled work force.

(iii) Limited: Lack of a high school diploma but more than eight years of education. Individuals with limited education are considered suitable for the semi-skilled to skilled work force.

(iv) High school, GED and above: Indicates an individual's ability to compete in all levels of the job market.

(c) Completion of training in a particular field of employment indicates an individual is capable of doing the job if the individual is not hindered in the performance of it by the impairment(s). Completion of a training course may offset the education factor in some instances.

(d) Job experience: Experience in a job field can overcome a lack of education and/or training. Jobs held in the last ten years shall be considered. Work experience shall be evaluated on the type of work previously performed, the length of employment and the potential for the experience to be transferred to other types of employment. Inability to continue working in one's prior field of work does not constitute a disability. Jobs and job experience are classified into the following categories:

(i) General labor: Does not require the ability to read or write. Such work includes, but is not limited to, field labor, construction labor, housework, and motel cleaning.

(ii) Semiskilled labor: Requires a minimal ability to read, write and do simple calculations. Such work includes, but is not limited to, security

guard, taxi driver, cashier and janitor.

(iii) Skilled labor: Ability to do work where the ability to read, write and do calculations of a complex nature is needed. Specialized training in the area is also considered. Such work includes, but is not limited to, that of an accountant, mechanic, plumber, and other areas requiring some degree of skill.

(e) Language ability: Inability to speak, read and write English [severely] limits an individual's choice of jobs.

(f) Appearance: An individual's appearance may [not be heavily weighted] be a factor in a disability determination. On rare occasions, an impairment is disfiguring and may interfere with employment. For example, an individual with psoriasis covering the face, arms and hands might have a problem getting a job working with the public, such as cashier or waitress.

(g) Marital status/living situation: These factors shall be evaluated for individuals who previously have not been self-supporting through employment or benefits (NMW, VA, OASDI, SSI, etc.). An individual who has relied on financial support from others before an impairment, and whose situation has not changed, cannot be considered employment disabled.]

F. Assessing the disability:

(1) Disability shall be determined by evaluating the impairment and other work-related factors. [A significant] An impairment must exist for there to be a finding that an individual is disabled. If [a significant] an impairment does not exist, a person shall not be found disabled.

(2) When [a significant] an impairment is substantiated, the other work-related factors shall be considered. Existence of an impairment does not necessarily result in a finding of disability. Many individuals with [significant] impairments are able to work and thus cannot be considered disabled according to the disability standards set forth in the [GA] NMW program. Impairments, together with a combination of other work-related factors which prevent working, shall be considered [disabilities] in determining a work participation waiver.

(3) There can be no set formula for a disability determination, since the combinations of impairment and other work-related factors are as varied as the number of individuals for whom disability determinations are made. It is essential that a disability determination be objective and substantiated by the findings, for the impairment and the other work-related factors be objective and substantiated by the findings, for both the impairment and the other work-related factors.

[8.102.420.12 NMAC - Rp 8.102.420.12 NMAC, 07/01/2001; A, 7/17/2006]

8.102.420.13 RESPONSIBILITY FOR DETERMINATION OF DISABILITY:

[A. Caseworker responsibility: The caseworker shall be responsible for obtaining medical reports and social information, and for preparing a social summary. This packet shall be submitted to the IRU for all applications. Also see Paragraph 2 of Subsection I of 8.100.130.13 NMAC. After the IRU decision concerning temporary and/or permanent disability, the caseworker shall make sure that an individual meets all other eligibility factors pertaining to the category of assistance.

B. Registering a GA application:

(1) An application for GA for both GA/temporarily disabled and GA/permanently disabled shall be registered upon receipt of the GA application form. At the application interview, the caseworker shall explain the programs and decides, with the applicant, if the individual wishes to pursue benefits under GA/temporarily disabled, GA/permanently disabled, or both. If the applicant indicates a wish to pursue benefits under only one GA category, the applicant shall be requested to withdraw the other, in writing. If an individual applies for benefits under both categories, IRU shall determine whether either temporary or permanent disability exist.

(2) An individual, if found eligible, may receive benefits under only one category of assistance.

(3) IRU responsibility:

(a) The responsibility for deciding that a disability exists and whether an impairment is of a temporary or permanent duration shall be determined solely by IRU, located in the department central office. Based upon the medical reports and social summary, and according to the guidelines in 8.102.420.11, 8.102.420.12, and 8.102.420.13 NMAC, IRU shall decide whether a temporary or permanent disability exists. IRU shall not be responsible for determining eligibility on any factor other than disability. After considering the IRU decision and all other relevant factors of eligibility, the caseworker shall take appropriate action on the application.

(b) The GA disability determination shall be made with respect to gainful employment which the individual may be capable of performing.

(4) Employment of applicant/recipient: There may be situations in which a GA applicant or recipient is or becomes employed. A caseworker shall deny or terminate GA benefits based on income in these situations if countable income exceeds the standard of need for the benefit group, but only IRU may determine whether the employment affects the disability determination.

~~(a) Minimal employment:~~ An individual who is minimally employed may still be considered disabled if the individual cannot be reasonably expected to be self supporting by at least the standard of need in the GA program. IRU shall take into consideration the duration of minimal employment, as well as the type of employment. IRU shall have the responsibility for determining employment disability.

~~(b) Shelter work:~~ Work made available to an individual through the interest or compassion of others, or to rehabilitate an individual (as in a sheltered work shop), but which would not ordinarily exist on the open labor market, shall not be considered employment in a disability determination.

~~(5) Contingency requirements to remain eligible for GA:~~

~~(a) An individual must accept corrective treatment available outside the GA program which involves no more than reasonable risk to correct the impairment, and which does not conflict with the individual's sincere religious convictions.~~

~~(b) If appropriate, the individual shall be referred to the division of vocational rehabilitation (DVR). A recipient must accept vocational rehabilitation services if offered.~~

~~(c) IRU shall make a determination whether a contingency requirement is warranted and must be met to maintain eligibility for GA.~~

~~(d) If a recipient refuses referral, treatment, or rehabilitation services, the caseworker shall notify IRU of the refusal. IRU shall review the case to determine if the refusal was justified. It shall be the sole responsibility of IRU to decide whether a refusal of treatment or rehabilitative services should result in termination of GA benefits. If IRU determines that the refusal was not justified, the caseworker shall be notified to terminate the GA benefits.~~

~~(6) Conditions of eligibility:~~

~~(a) The recipient shall be informed of any ongoing conditions or contingency requirements needed to meet ongoing eligibility.~~

~~(b) To remain eligible, an individual must accept corrective treatment and comply with contingency requirements for continued eligibility, unless a determination is made that the treatment involves more than reasonable risk to correct the impairment, or that the treatment conflicts with the individual's sincere religious convictions.~~

~~(c) If determined appropriate, an individual shall be referred to DVR. A recipient must accept DVR vocational rehabilitation services if offered.~~

~~(d) The caseworker shall notify IRU of any refusal or failure to comply with a condition of eligibility, a contingency requirement, or a referral for treatment or~~

~~rehabilitative services. IRU shall review the case to determine if the refusal was justified.~~

~~(7) Reevaluation of disability:~~

~~(a) An individual's disability shall be reevaluated on a periodic basis, as specified by IRU. At the time of reevaluation, it shall be necessary to get an update of the medical condition, as well as any changes in other work related factors. IRU shall remain responsible for deciding whether a disability still exists, whether the disability is still of a temporary or a permanent nature and the date, if applicable, of the next reevaluation.~~

~~(b) GA shall be terminated if it is decided by IRU, on the basis of medical and social information, that a disability no longer exists. The decision must be based on a clear indication of improvement in the recipient's disability status.~~

~~(c) GA shall be terminated if it is determined that an individual has failed or refused to comply with a condition of eligibility or a contingency requirement, without good cause.]~~

A. Caseworker responsibility: The caseworker shall be responsible for obtaining medical reports and social information, and for preparing the medical social summary. This packet shall be submitted to the IRU for all work program participation waiver requests. After the IRU decision concerning the work participation waiver, the caseworker shall inform the NMW participant of the IRU determination.

B. IRU responsibility: The responsibility for deciding that a disability exists or a modified work requirement. Based upon the medical reports and social summary, and according to the guidelines in 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC, IRU shall decide whether a disability exists.

C. Reevaluation of disability: An individual's disability shall be reevaluated on a periodic basis, as specified by IRU. At the time of reevaluation, it shall be necessary to get an update of the medical condition, as well as any changes in other work-related factors. IRU shall remain responsible for deciding whether a disability still exists, and the date, if applicable of the next reevaluation.

[8.102.420.13 NMAC - Rp 8.102.420.13 NMAC, 07/01/2001; A, 7/17/2006]

8.102.420.15 [CATEGORICAL ELIGIBILITY - BURIAL ASSISTANCE: To be eligible for inclusion in the burial benefit group, a deceased individual must have been a recipient of NMW, GA, refugee assistance, ARSCH, or medicaid benefits from the state of New Mexico.]

[RESERVED]

[8.102.420.15 NMAC - Rp 8.102.420.15 NMAC, 07/01/2001; Repealed, 7/17/2006]

8.102.420.16 SSI STATUS:

[A. NMW:

~~(1) Any individual who is potentially eligible for SSI on the basis of either age or disability must apply for and accept SSI.~~

~~(2) An individual receiving SSI, or who would be receiving SSI except for recovery of an overpayment, is not eligible to be included in an NMW or GA benefit group.~~

B. GA:

~~(1) Ongoing SSI:~~ An individual receiving SSI, or who would be receiving SSI except for recovery of an overpayment, is not eligible to be included in a GA benefit group.

~~(2) SSI denial:~~ To be eligible for inclusion in a permanent disability GA benefit group, the disabled member(s) must have been denied or closed by SSI or OASDI within the six months preceding the month of application for GA. The SSI/OASDI denial/closure must be based on a decision that the disability is not severe enough.

~~(a) Individuals whose SSI or OASDI has been denied or terminated must request and pursue their hearing and appeal rights through the administrative law judge (ALJ/appeals) level.~~

~~(b) If an individual already receiving temporary disability GA is, during a subsequent review, determined by IRU to have a permanent disability, the individual does not become ineligible if there has been no SSI denial. The individual must, instead, file an application for OASDI and/or SSI within 30 days. Failure to apply for SSI and/or OASDI within the 30 day limit makes the individual ineligible with respect to the SSI denial requirement. This exemption does not include an individual who may have been receiving GA at a previous time but who was terminated and who is reapplying for GA following termination for failure to apply for SSI as required in this section.~~

~~(c) Once the SSI denial requirement is met, individuals classified as having a permanent disability must maintain an active application for OASDI and/or SSI. If the application is denied, the individual must pursue the individual's hearing rights through the ALJ level. If an individual has allowed the individual's hearing rights to run out, the individual must file a new application.~~

~~(d) An individual who has pursued hearing rights through the ALJ level and who has not been approved shall not be required to pursue SSI or OASDI benefits any further unless the IRU determines that there has been an increase in the individual's disability.~~

~~(3) Interim assistance authorization:~~ An individual applying for GA for

the permanently disabled or GA for the temporarily disabled must, as a condition of eligibility, authorize in writing the reimbursement of GA benefits paid on the individual's behalf from the individual's first retroactive SSI benefits should the individual become eligible for SSI for any of the months the individual received GA. This repayment of general assistance benefits from SSI is referred to as interim assistance reimbursement (IAR).

(a) Definition of interim assistance reimbursement: The state of New Mexico is a participant in the social security administration's (SSA's) interim assistance reimbursement (IAR) program. The secretary of health and human services, through the SSA, has agreed to reimburse the state for general assistance payments made to an individual during the period the individual's application for SSI was pending. SSA sends the first retroactive payment due an individual to the state as repayment for the GA payments made to the individual.

(b) Time of authorization for IAR: An individual who applies for GA for either temporarily or permanently disabled must authorize IAR as a condition of eligibility to receive benefits under GA. The authorization shall be completed at the time of the interview. The completed authorization shall be held pending disposition of the application. In the event the application is approved, the authorization form shall be forwarded immediately to SSA.

(c) Duration of authorization:

(i) The authorization for IAR shall remain in effect from the signature date until: (1) SSA releases the SSI retroactive payment to the department and the department recovers the full amount to which it is entitled; (2) The department and the individual agree to terminate the authorization.

(ii) Termination of GA benefits does not constitute termination of the IAR authorization. The state shall receive the first retroactive SSI payment for an individual who has received GA in the past and for whom an IAR authorization is in effect.

(d) Individual's responsibility to Apply for SSI: In order for the IAR authorization to remain in effect, an individual must have filed an application for SSI within 12 months of signing the authorization. The general assistance for the permanently disabled regulations, require that the GA applicant have an active SSI application at all times. See Paragraph (3) of Subsection B of 8.102.420.16 NMAC. Individuals who fail to follow through with either the initial application interview or who fail to file a timely request for reconsideration or appeal shall not be considered to have met the eligibility factor of OASDI/SSI reapplication.

(e) Determination of repayment amount:

(i) The amount of repayment for GA benefits shall be determined by comparing the months and amounts of GA received by the individual to the months and amounts of SSI retroactive payment issued by SSA. For each month for which GA and SSI were both paid the amount of the GA benefit, not to exceed the amount of SSI for that month, will be recouped. The amount available for recoupment shall be from the first day the individual is eligible for SSI benefits, and shall end with (and include) the month the SSI payment is made. Under no circumstances shall the department recoup a GA payment for any month in which an SSI payment has not been issued. The department shall not recoup a GA payment for any month in which a GA payment was not issued.

(ii) Emergency advance SSI payments shall not be available for recoupment. Presumptive disability SSI payments shall not be available for recoupment.

(f) Issuance of balance of SSI payment: In most circumstances, the amount of the total SSI payment will exceed the total GA payment. The balance of the remaining cumulative SSI monthly payments shall be sent to the individual within 10 calendar days of the date the department received the SSI retroactive payment from SSA. The balance shall be paid in the form of a HSD warrant. The individual shall be informed, in writing, of the retroactive SSI payment amount, how the repayment amount was computed by the department, and the balance amount being sent to the individual.

(g) Returned checks: When the department is issued an amount greater than the GA paid to an individual, and the excess payment cannot be issued to the individual because the individual dies or cannot be found, the balance of the SSI retroactive payment shall be returned to SSA.

(h) When the individual dies before eligibility is determined: The department has the right to receive repayment for GA for an individual who dies before a determination of SSI eligibility is made. In this circumstance, SSA will make a determination of eligibility or ineligibility for payment. Any excess payment after recoupment will be returned to SSA.

C. Adult residential shelter care home (ARSCH): To be eligible for inclusion in an adult residential shelter care home (ARSCH) supplemental payment benefit group, an individual must be eligible for SSI.]

An individual who is potentially eligible for SSI on the basis of either age or disability must apply for and accept SSI. An individual receiving SSI, or who would be

receiving SSI except for recovery of an overpayment, is not eligible to be included in an NMW, or an EWP benefit group. [8.102.420.16 NMAC - Rp 8.102.420.16 NMAC, 07/01/2001; A, 7/17/2006]

8.102.420.17 [RESIDENCE IN A FACILITY OR INSTITUTION:

A. NMW: See 8.102.400.15 NMAC for provisions concerning living in the home.

B. GA:

(1) An individual shall not be eligible for inclusion in a GA benefit group if the individual is:

(a) A patient in a fully publicly funded medical institution for any reason. This includes such facilities as the state hospital in Las Vegas, meadows medical home in Las Vegas, or the facilities at Fort Stanton. It does not include fee for service public medical facilities such as UNM hospital in Albuquerque.

(b) An inmate in a public non-medical institution.

(i) This includes facilities in the state prison system, jails, and detention centers, as well as juvenile correction facilities such as the Springer boys home and other similar correctional facilities.

(ii) A person shall be considered an inmate if residing in a public facility at the order or discretion of another, such as a person sentenced to a prison or committed under court order.

(2) A person attending a public educational or vocational training institution who lives in housing provided by the institution shall not be considered an inmate or patient of a public institution and shall not be made ineligible by these provisions.

C. ARSCH: To be eligible for ARSCH payments, an individual must be living in a facility licensed as an adult residential shelter care facility by the New Mexico department of health.]

[RESERVED]

[8.102.420.17 NMAC - Rp 8.102.420.17 NMAC, 07/01/2001; Repealed, 7/17/2006]

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

This is an amendment to 8.102.500 NMAC, Sections 8 and 10, effective 7/17/2006.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW or refugee cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the

gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1500 liquid and \$2000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

~~**B. GA program need determination:** Eligibility for the GA program requires a finding that the benefit group's countable gross earned and unearned income does not equal or exceed the standard of need for the size of the benefit group.]~~

[C.] B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- (a) one person \$ 679
- (b) two persons \$ 910
- (c) three persons \$1,140
- (d) four persons \$1,372
- (e) five persons \$1,603
- (f) six persons \$1,833
- (g) seven persons \$2,064
- (h) eight persons \$2,295
- (i) nine persons \$2,527
- (j) ten persons \$2,759

(k) for more than ten persons, add \$ 232 for each additional person.

~~**D.] C. Eligibility for support services only:** Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:~~

- (1) one person \$ 798
- (2) two persons \$1,070
- (3) three persons \$1,341
- (4) four persons \$1,613
- (5) five persons \$1,885
- (6) six persons \$2,156
- (7) seven persons \$2,428
- (8) eight persons \$2,700
- (9) nine persons \$2,972
- (10) ten persons \$3,244
- (11) for more than ten persons, add \$ 272 for each additional person.

~~**E.] D. Standard of need:**~~

(1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the individual's share of benefit group supplies.

(3) The financial standard includes approximately \$79 per month for each individual in the benefit group.

(4) The standard of need for the NMW, ~~[GA]~~, and refugee cash assistance benefit group is:

- (a) one person \$ 231
- (b) two persons \$ 310
- (c) three persons \$ 389
- (d) four persons \$ 469
- (e) five persons \$ 548
- (f) six persons \$ 627
- (g) seven persons \$ 706
- (h) eight persons \$ 802
- (i) nine persons \$ 881
- (j) ten persons \$ 960
- (k) for more than 10 persons, add \$79 for each additional person.

~~**F.] E. Special needs:**~~

(1) Special clothing allowance: In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of ~~[\$44]~~ \$100 for the month of August only.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, ~~[GA]~~, or refugee cash assistance benefit group for the month of August.

(c) The clothing allowance is not allowed in determining eligibility for NMW, ~~[GA]~~ or refugee cash assistance.

(2) Layette: A one-time layette allowance of \$25 is allowed upon the birth of a child who is or will be included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

~~**G.] Shelter home care:** A cash payment may be made to a GA or an SSI recipient when the recipient resides in a licensed shelter care home because the recipient needs help with personal care, such as bathing, dressing, eating or taking prescribed medication.~~

~~(1) The payment shall be allowed only if the GA or SSI recipient is living in a residential shelter care facility that is licensed by the New Mexico department of health.~~

~~(2) Eligibility and payment standard for GA recipients:~~ The payment for a GA recipient living in a licensed resi-

dential shelter care facility is equal to the cash assistance payment plus \$100.

~~(3) Payment to an SSI recipient:~~ The payment made to an SSI recipient living in a licensed residential shelter care facility is \$100 per month.]

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006]

8.102.500.10 [FUNERAL EXPENSES:

~~**A. Eligibility:** Payment towards the cost of a funeral for a categorically eligible individual (8.102.420.15 NMAC) may be made when the resources considered available to meet the cost of the funeral are less than \$600. Resources which are considered available include:~~

- ~~(1) cash available to the deceased at the time of death;~~
- ~~(2) any insurance benefits designated for use in meeting the individual's funeral costs;~~
- ~~(3) any other death or burial benefits from sources such as social security or railroad retirement benefits; veterans benefits; legally responsible relatives or the estate of the deceased;~~
- ~~(4) gifts, contributions, or written commitments to help pay the cost of the funeral which are made by any individual not having a legal support obligation for the deceased.~~

~~**B. Covered services:** Funeral costs which are considered include necessary compulsory expenditures arising immediately upon and due to death, including:~~

- ~~(1) embalming;~~
- ~~(2) purchase of a coffin, burial shroud, and burial plot;~~
- ~~(3) burial or cremation services, including the cost for opening and closing the grave;~~
- ~~(4) customary ceremonies, rites and services, excluding food, beverages or other similar consumables attendant on disposition of the remains; and~~
- ~~(5) transportation of the deceased from the mortuary to a nearby cemetery.~~

~~**C. Payment:** Where resources are not adequate, as determined in Subsection A of 8.102.500.10 NMAC, a payment of up to \$200 may be made towards the cost of the funeral. The amount of the payment is the difference between the cost of the funeral and available resources, not to exceed \$200.~~

~~**D. Payment procedures:** Funeral payments are reimbursed by a payment voucher to the vendor providing the services.] **[RESERVED]**~~

[8.102.500.10 NMAC - Rp 8.102.500.10 NMAC, 07/01/2001; Repealed, 7/17/2006]

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

This is an amendment to 8.102.611 NMAC, Sections 6 and 10, effective 7/17/2006.

8.102.611.6 OBJECTIVE:

A. The purpose of the New Mexico works (NMW) program is to improve the quality of life for parents and children by increasing family income, assisting parents to develop the discipline necessary for self-sufficiency and to improve their self-esteem. The further purpose of the program is to increase family income through family employment and child support and by viewing financial assistance as a support service to enable and assist parents to participate in employment.

B. The objective of the education works program (EWP) is to provide financial assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or recipient benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

C. The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program like NMW or the federal program of supplemental security income (SSI).

D. The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.

E. The objective of the burial assistance program is to assist in payment of burial expenses for deceased, low-income individuals.

[8.102.611.6 NMAC - N, 12/15/2005; A, 7/17/2006]

**8.102.611.10 EDUCATION
WORKS CASH ASSISTANCE:**

A. Subject to the availability of allocated state funds, the education works program (EWP) provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

(1) The state-funded benefit amount is determined based on the same determination used to calculate the benefit

amount in the NMW cash assistance program.

(2) During the initial application or recertification process, the caseworker shall screen an applicant for eligibility for the EWP. The caseworker shall explain the EWP to applicants who have applied for NMW cash assistance or NMW recipients who are applying for continued assistance. The department's work program contractor may screen recipients of NMW cash assistance for eligibility for participation in the EWP and make a referral to the caseworker for transition to the EWP.

(3) An individual shall not have a month of participation in the EWP applied to the 60-month term limit for receipt of benefits in the state's TANF program.

(4) A benefit group participating in the EWP is considered to meet the categorical eligibility factors for the food stamp program.

(5) A benefit group participating in the EWP shall have its eligibility for medicaid determined. Eligibility shall be based on the rules in place for each medicaid program.

B. Limitations of the education works cash assistance program:

(1) The number of participants in the EWP shall be limited to the number for which state funding is allocated.

(2) Recipients who are actively participating in the NMW cash assistance program, and who meet the requirements for the EWP, shall be given first opportunity to switch programs.

(3) A benefit group shall not participate in the NMW and EWP simultaneously.

(4) A benefit group with income from employment may receive support services funded by the federal TANF block grant. A benefit group that does not have income from employment shall not be eligible to receive support services funded by the TANF block grant.

~~[(5) EWP is limited to participation by an individual who does not have a bachelor's degree.]~~

~~[(6) (5) A recipient may participate in the EWP for no more than twenty-four (24) months, whether or not consecutive, except:~~

~~(a) that a recipient may participate in the EWP for one additional academic term following the twenty-four (24) month participation limit if doing so will result in the recipient earning a degree, or~~

~~(b) that a recipient may participate in the EWP for two additional academic terms following the twenty-four (24) month participation limit at the discretion of the director if doing so will result in the recipient earning a degree.~~

~~[(7) A participant may earn only~~

~~one degree through the EWP.]~~

~~[(8) (6) A participant must be a full-time student as defined by the educational institution.~~

C. Eligibility criteria:

(1) **Conditions:** Eligibility for participation in the EWP shall be based on all eligibility criteria for the NMW cash assistance program. As a condition of approval, an applicant or recipient ~~[cannot have a bachelor's degree and]~~ must:

(a) be otherwise eligible for NMW cash assistance;

(b) be in good standing with the department; good standing means that sanctions are not currently applied to the benefit group due to noncompliance with work programs, child support enforcement or reporting requirements;

(c) provide proof that the applicant or recipient has been accepted or is enrolled in a two- or four-year post-secondary, graduate or post-graduate degree education program;

(d) apply for all financial aid available, including grants and scholarships.

(2) Level of effort:

(a) A participant must engage in a combination of education, training, study or work-site experience, for an average of 20 hours a week in each month of participation in the EWP.

(b) One and one-half hours of study time shall be credited for each hour of class time.

(c) Work-site experience includes, but may not be limited to, paid employment, work study, training-related practicums, an internship, a clinical placement, or laboratory or field work, or any other work activity pursuant to the NMW cash assistance program.

D. Satisfactory participation in the education works program:

(1) To maintain satisfactory participation in the EWP, a participant shall meet all the requirements and standards of the educational institution that the participant attends, including class attendance.

(2) A participant shall maintain a 2.0 grade point average in each school term.

E. Reporting requirements for recipients:

(1) A recipient must provide ISD with proof of the recipient's final grades for each school term. Final grades must be provided by the end of the month in which the school term ends.

(2) A recipient must provide ISD with a copy of all letters relating to the receipt or denial of financial aid.

(3) A recipient must report to ISD when the recipient intends to drop out of school.

(4) A recipient must report any circumstance that might affect the recipient's

ent's ability to participate in the EWP.

(5) School attendance and reporting requirements for dependent children apply to the EWP.

(6) All reporting requirements in the NMW cash assistance program apply to the EWP.

[8.102.611.10 NMAC - Rp, 8.102.610.12 NMAC, 12/15/2005; A, 7/17/2006]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Section 8, effective 7/17/06.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1500 liquid or \$2000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

B. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

C. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- (a) one person \$ 679
- (b) two persons \$ 910
- (c) three persons \$ 1,140
- (d) four persons \$ 1,372
- (e) five persons \$ 1,603
- (f) six persons \$ 1,833
- (g) seven persons \$ 2,064
- (h) eight persons \$ 2,295
- (i) nine persons \$ 2,527
- (j) ten persons \$ 2,759

(k) for more than ten persons, add \$ 232 for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial

standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) The financial standard includes approximately \$79 per month for each individual in the benefit group.

(4) The standard of need for the GA cash assistance benefit group is:

- (a) one person \$ 231
- (b) two persons \$ 310
- (c) three persons \$ 389
- (d) four persons \$ 469
- (e) five persons \$ 548
- (f) six persons \$ 627
- (g) seven persons \$ 706
- (h) eight persons \$ 802
- (i) nine persons \$ 881
- (j) ten persons \$ 960

(k) for more than 10 persons, add \$79 for each additional person.

E. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

F. Special clothing allowance for school-age dependent children: In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of [~~\$44~~] \$100 for the month of August only.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group for the month of August.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.19.6 NMAC, LGRRDS, Office of the County Treasurer, filed December 7, 2001 is repealed and replaced with the new 1.19.6 NMAC, LGRRDS, Office of the County Treasurer, effective July 24, 2006.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

ERNMENT ADMINISTRATION
CHAPTER 19 LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULE (LGRRDS)
PART 6 LGRRDS, OFFICE OF THE COUNTY TREASURER

1.19.6.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.19.6.1 NMAC - Rp, 1.19.6.1 NMAC, 07/24/2006]

1.19.6.2 SCOPE: county treasurer - local government
[1.19.6.2 NMAC - Rp, 1.19.6.2 NMAC, 07/24/2006]

1.19.6.3 STATUTORY AUTHORITY: Section 14-3-18 NMSA 1978. The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.
[1.19.6.3 NMAC - Rp, 1.19.6.3 NMAC, 07/24/2006]

1.19.6.4 DURATION: permanent
[1.19.6.4 NMAC - Rp, 1.19.6.4 NMAC, 07/24/2006]

1.19.6.5 EFFECTIVE DATE: July 24, 2006 unless a later date is cited at the end of a section.
[1.19.6.5 NMAC - Rp, 1.19.6.5 NMAC, 07/24/2006]

1.19.6.6 OBJECTIVE: To establish a model records retention and disposition schedule for the orderly management and retirement of records created and maintained by county treasurer offices.
[1.19.6.6 NMAC - Rp, 1.19.6.6 NMAC, 07/24/2006]

1.19.6.7 DEFINITIONS:
A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Archives" means the state archives of the commission of public records.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Local government records retention and disposition schedule" means rules adopted by the commission describing the records created and maintained by local government officials and establishing a timetable for their life cycle and providing authorization for their disposition.

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission of public records.

F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts.

G. "Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

H. "Records custodian" means any public officer responsible for the maintenance, care or keeping of a public body's public records.

I. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

J. "Retention" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[1.19.6.7 NMAC - N, 07/24/2006]

1.19.6.8 ABBREVIATIONS AND ACRONYMS:

A. "CFR" means code of federal regulations.

B. "NMAC" means New Mexico administrative code.

C. "NMSA" means New Mexico statutes annotated.

D. "USC" means United States code.
[1.19.6.8 NMAC - N, 07/24/2006]

1.19.6.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the GRRDS,

General Administrative Records Retention and Disposition Schedule, (For use by Local Governments and Educational Institutions), 1.15.3 NMAC.

B. For records of a financial nature, refer to the GRRDS, General Financial Records Retention and Disposition Schedule, 1.15.5 NMAC.

C. For records of a personnel nature, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.7 NMAC.

D. For records of a medical nature, refer to the GRRDS, General Medical Records Retention and Disposition Schedule, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. Descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly not every file will contain an example of each document listed in the description.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials, and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents and files shall be only by authorization of the records custodian, or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies shall only be upon specific statutory authorization or court order.

I. Records, papers or documents may be reformatted through microphotography. Such reformatted records shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Sections 14-1-5 and 14-1-6 NMSA 1978).

J. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.
[1.19.6.9 NMAC - N, 07/24/2006]

1.19.6.10-102 [RESERVED]
[Previously filed in County Assessor schedule, 1.19.3 NMAC]

1.19.6.103 MONTHLY TAX DISTRIBUTION REPORT:

A. Program: accounting
B. Maintenance system: local government preference

C. Description: report concerning taxes collected and distributed to different public entities. Report may include entity name, current tax year, prior tax year, total amount collected, administrative fee, special assessments, prior adjustments, net distribution paid, total amount of tax distributed, current monthly adjustments, amounts issued, name of fund, amount of penalties and interest paid, etc.

D. Retention: three years after close of tax year for which report created

[1.19.6.103 NMAC - Rp, 1.19.6.103 NMAC, 07/24/2006]

1.19.6.104 MANUFACTURED HOME TAX RECEIPT FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning manufactured homes that no longer have an outstanding tax liability. File may include owner name, account number, vehicle identification number, amount paid, type of manufactured home, model number, size, etc.

D. Retention: three years after close of tax year for which created

[1.19.6.104 NMAC - Rp, 1.19.6.104 NMAC, 07/24/2006]

1.19.6.105 OIL AND GAS AD VALOREM TAX FILES:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning copies of distributions and amount of taxes being received by the county. File may include schedules and reports received from taxation and revenue department, etc.

D. Retention: three years after close of tax year for which created

[1.19.6.105 NMAC - Rp, 1.19.6.105 NMAC, 07/24/2006]

1.19.6.106 OIL AND GAS WELL INDEX:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: copy of index created by taxation and revenue department (oil and gas accounting division). Index may include well description,

location, operator, lessee, lease number, county, school district, etc.

D. Retention: until superseded by new index
[1.19.6.106 NMAC - Rp, 1.19.6.106 NMAC, 07/24/2006]

1.19.6.107 TAX RECEIPT FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning receipts issued by the county treasurer for payment of taxes, fees, and charges. File may include name of payee (i.e., land use, corrections, sheriffs, refuse, utilities, county rental, clerks, housing, etc.), validation tapes, daily payment postings, remittance reports, etc.

D. Retention: three years after close of fiscal year in which created
[1.19.6.107 NMAC - Rp, 1.19.6.107 NMAC, 07/24/2006]

1.19.6.108 AUTHORIZATION TO WAIVE FORM:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: form concerning a request to waive penalties for payment of taxes. Form may include date, form number, from and to date, account number, request information, total amount, refund amount, adjustment documentation, approved, treasurer or deputy treasurer signature, etc.

D. Retention: until audit report released
[1.19.6.108 NMAC - Rp, 1.19.6.108 NMAC, 07/24/2006]

1.19.6.109 UNDELIVERABLE PROPERTY TAX BILL:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning undelivered tax bill. Bill may include property owner name; bill number; tax year; tax amount (i.e., interest, penalty, etc.); property address or description; town, range, section, lot, or block number; municipality or school district; property code or value; tax rate; payment instructions; etc.

D. Retention: six months after date issued
[1.19.6.109 NMAC - Rp, 1.19.6.109 NMAC, 07/24/2006]

1.19.6.110 DELINQUENT PAYMENT TAX NOTICE FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning a notice sent out annually to entities that are delinquent more than two years in payment of taxes. File may include bill number, account number, property description, property code, property address, owner name or mailing address, tax year, tax due (i.e., interest, penalty, etc.), payment instructions, letter to taxation and revenue, second delinquent notice, etc.

D. Retention: six months after date issued
[1.19.6.110 NMAC - Rp, 1.19.6.110 NMAC, 07/24/2006]

1.19.6.111 [RESERVED]

[Previous record series 1.19.6.111 NMAC has been combined with 1.19.6.110 NMAC]

1.19.6.112 REAL PROPERTY SALES FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records of real property sold by the state property tax division for delinquent taxes. File may include copy of deed, legal documentation, copy of property sold, taxes paid, name of new owner, notice of public action, list of sales, etc.

D. Retention: one year after date of sale
[1.19.6.112 NMAC - Rp, 1.19.6.112 NMAC, 07/24/2006]

1.19.6.113 PERSONAL PROPERTY SALES FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records of personal property sold by the county treasurer for delinquent taxes. File may include copy of demand warrant issued, liens filed, documentation on surrender of personal property, copy of notice of sale, etc.

D. Retention: until all delinquent taxes are paid
[1.19.6.113 NMAC - Rp, 1.19.6.113 NMAC, 07/24/2006]

1.19.6.114 [RESERVED]

[Previously filed in County Assessor schedule 1.19.3 NMAC]

1.19.6.115 TAX ROLL FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning monthly corrections to tax roll list. File may include claim for refund from district court, action to change property tax schedule, copies of motions or filings, stip-

ulated judgment, court orders, final decrees, authorization from county treasurer, dismissals and approvals, assessments (omitted, cancelled, corrected, etc.), department of finance certified mill rates, correspondence, memoranda, etc.

D. Retention: 10 years after close of tax year for which corrections authorized

[1.19.6.115 NMAC - Rp, 1.19.6.115 NMAC, 07/24/2006]

1.19.6.116 BANKRUPTCY FILES:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning bankruptcy cases filed in federal bankruptcy court that may have outstanding property taxes. File may include notice of commencement of case (chapters 7, 11, 12, or 13), proof of claim, listing of taxes due, notice of plan confirmation, plan of reorganization, debtors disclosure statement, notice of filing documents, notice of hearing, order confirming debtors plan of reorganization, discharge of debtors, final decree closing case, partial payment copies, correspondence, memoranda, etc.

D. Retention: one year after close of tax year in which case closed
[1.19.6.116 NMAC - Rp, 1.19.6.116 NMAC, 07/24/2006]

1.19.6.117 MONTHLY FINANCIAL REPORTS:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning monthly financial reports issued by the county treasurer and distributed to the county commissioners. Report may include investments, bank reconciliation, tax distribution, cash transfers, tax cash posting, receipts, statement of county bonded debt, tax maintenance schedule, public school financial statement, etc.

D. Retention: six years after close of fiscal year in which created
[1.19.6.117 NMAC - Rp, 1.19.6.117 NMAC, 07/24/2006]

1.19.6.118 INVESTMENT CONFIRMATION:

A. Program: investments
B. Maintenance system: local government preference

C. Description: records confirming that transactions between the treasurer and the broker have been completed. Confirmation may include firm name and address, trade date, settlement date, account number, initial investment amount, investment description, purchase or sell

price, accrued interest, etc.

D. Retention: six years after date of confirmation [1.19.6.118 NMAC - Rp, 1.19.6.118 NMAC, 07/24/2006]

1.19.6.119 INVESTMENT FILE:

A. Program: investments
B. Maintenance system: local government preference

C. Description: records concerning investment of county funds. File may include firm names and addresses, trade dates, settlement dates, account numbers, investment descriptions, investment amounts, accrued interest, quote sheets, repurchase agreements, account information, investment forms, copy of payment voucher, state treasurer's validated deposit slip with attached sale transaction, wiring instructions, etc.

D. Retention: six years after close of fiscal year in which created [1.19.6.119 NMAC - Rp 1.19.6.119 NMAC, 07/24/2006]

1.19.6.120 INVESTMENT PORTFOLIO LISTING:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning list of all county investments made by treasurer. Listing may include investment type, funds invested, date invested, date of maturity, interest rate, name of bank or holding agency, money amount, unpaid interest income, totals, etc.

D. Retention: six years after close of fiscal year in which created [1.19.6.120 NMAC - Rp, 1.19.6.120 NMAC, 07/24/2006]

1.19.6.121-123 [RESERVED]
[1.19.6.123 filed in County Manager 1.19.4]

1.19.6.124 DEBT FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning debts incurred by any county in New Mexico. File may include debts (bonds, notes, certificates of indebtedness, interest coupons, etc.), incurred by the entity, etc.

D. Retention:
(1) Bank, savings and loan association or other third party: until end of fiscal year in which debt paid

(2) Debtor agency: two years after end of fiscal year in which debt paid [1.19.6.124 NMAC - Rp, 1.19.6.124 NMAC, 07/24/2006]

1.19.6.125 [RESERVED]

1.19.6.126 CERTIFICATE OF DESTRUCTION FILE:

A. Program: treasurer
B. Maintenance system: local government preference

C. Description: records concerning destruction documentation regarding payments on bonds, notes, certificate of indebtedness or interest coupon. File may include account number, maturity date, date paid, correspondence, information required by debtor agency, etc.

D. Retention: six years after close of fiscal year in which created [1.19.6.126 NMAC - Rp, 1.19.6.126 NMAC, 07/24/2006]

HISTORY OF 1.19.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: SRC Rule No. 93-03, Records Retention and Disposition Schedule for Office of the County Treasurer, 5-7-93.

History of Repealed Material:

1.19.6 NMAC, LGRRDS Office of the County Treasurer filed 12/07/2001 - Repealed effective 07/24/2006

NEW MEXICO COMMISSION OF PUBLIC RECORDS

June 23, 2006

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rule:

* 1.18.333 NMAC ERRDS, Taxation and Revenue Department;

A review of this rule shows that its impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS

1.18.333 NMAC ERRDS, Department of Taxation and Revenue

1. Subject matter: 1.18.333 NMAC, Executive Records Retention and Disposition Schedule for the Department of Taxation and Revenue, Motor Vehicle Division. This rule is a modification to the existing ERRDS, 1.18.333 NMAC, filed January 5, 2006. Section 1.18.333.293 will be modified to add retention and description modifications from a re-numbered section 1.18.333.360. Sections 1.18.333.615 through 1.18.333.624 and 1.18.333.671 will be modified to add confidentiality. Sections 1.18.333.600, 1.18.333.604, 1.18.333.634, 1.18.333.654, 1.18.333.655 will be modified to add retention and description modifications. Sections 1.18.333.606, 1.18.333.607, 1.18.333.613, 1.18.333.622 through 1.18.333.624, 1.18.333.635, 1.18.636 and 1.18.660 through 1.18.333.668 will be new sections to the rule. Section 1.18.333.657 will be repealed. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Administrator, the Cabinet Secretary of the Department of Taxation and Revenue and legal counsel for the Department of Taxation and Revenue.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Taxation and Revenue. Persons and entities normally subject to the rules and regulations of the Department of Taxation and Revenue may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Department of Taxation and Revenue.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Taxation and Revenue. Any person or entity outside the covered geographical area that conducts business with or through the Department of Taxation and Revenue may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes

Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: July 24, 2006.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.333.NMAC ERRDS, Department of Taxation and Revenue.

Alvin Garcia Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.667 NMAC, Sections 273, 274, 275 and 276, effective July 24, 2006.

1.18.667.273 [~~ACTIVE WATER FILES:~~

A. Program: food quality management and field operations

B. Maintenance system: alphabetical by name of entity.

C. Description: records concerning drinking water regulations that apply to all community and non-community public water systems. Files may contain chemical test results, bacteriological results, surveys, vulnerability assessment information, waivers, correspondence, etc.

D. Retention:

(1) Surveys, waivers, legal correspondence and chemical test results: 10 years after close of calendar year in which created.

(2) Corporate correspondence and active correspondence: five years after close of calendar year in which created.

(3) Bacteriological results: two years after close of calendar year in which created.] [RESERVED]

[1.18.667.273 NMAC - N, 7/8/2000; Repealed, 07/24/2006]

1.18.667.274 [~~WATER SUPPLY INSPECTION FILES:~~

A. Program: food quality management and field operations.

B. Maintenance system:

alphabetical by name of water system.

C. Description: records concerning the inspection, review, monitoring, sampling and sanitary surveys of water systems to determine compliance with the drinking water regulations of the New Mexico environmental improvement board. Files may be divided into six sections of compliance and enforcement, including water analysis and water chemical analysis reports; source water assessment; plans and specifications showing number of people served by water supply system, location of system and maps; documentation of loans and other types of funding; sanitary surveys; correspondence, etc.

D. Retention:

(1) Bacteriological water analysis reports: six years after date report created.

(2) Water chemical analysis reports: 10 years after date report created.

(3) All other documents: until water system no longer exists.] **DRINKING WATER PROGRAM FILES:**

A. Program: drinking water

B. Maintenance system: alphabetical by name of water system, then chronological by calendar year

C. Description: records concerning the inspection, review, monitoring, and sampling of water systems to determine compliance with the drinking water regulations of the New Mexico environmental improvement board. Files may contain compliance reports, enforcement reports, water bacteriological analysis reports, water chemical analysis and reports, source water assessments, plans and specifications showing the number of people served by a water supply system, location of system maps; documentation of loans and other types of funding; sanitary surveys; waivers, correspondence, etc.

D. Retention:

(1) Microbiological analysis records:

(a) Analysis satisfactory: two years from date of report

(b) State determinations and exceptions: five years from date of report

(2) Turbidity and disinfectant residual measurement records:

(a) Meets standards: 12 years from date of report

(b) State determinations and exceptions: 40 years from date of report

(3) Sanitary surveys records, chemical analysis reports, state approvals records, enforcement actions records, vulnerability determination (sampling) records, monitoring frequency records, lead and copper records, records regarding control of disinfectants and disinfection by products, records regarding multiple wells as a single treat-

ment plant, monitoring plans for systems: 12 years after date of report or date record created

(4) Records regarding the state allowing a higher turbidity limit, records regarding reduction of turbidity sampling below normal, determination of groundwater under the direct influence of surface water records: 40 years from date of report or date record created

[1.18.667.274 NMAC - Rp SRC Rule No. 85-01 Item No. 901, 7/8/2000; A, 07/24/2006]

[The federal regulations for drinking water systems are under 40 CFR 142.14.]

1.18.667.275 [~~BACTERIOLOGICAL WATER ANALYSIS REPORTS:~~

A. Program: food quality management and field operations.

B. Maintenance system: see 1.18.667.274 NMAC water supply inspection files.

C. Description: records concerning sample collection to determine bacteria levels and verify that water systems are in compliance with the drinking water regulations of the New Mexico environmental improvement board. Reports may show location of water system, district, owner, type of supply, point of collection, date sample collected, analysis of sample, correspondence, etc.

D. Retention: filed in 1.18.667.274 NMAC water supply inspection files.] [RESERVED]

[1.18.667.275 NMAC - Rp SRC Rule No. 85-01 Item No. 898, 7/8/2000; Repealed, 07/24/2006]

1.18.667.276 [~~WATER CHEMICAL ANALYSIS REPORTS:~~

A. Program: food quality management and field operations.

B. Maintenance system: see 1.18.667.274 NMAC water supply inspection files.

C. Description: records concerning sample collection to determine chemical, lead, copper and contaminant levels and verify that water systems are in compliance with the drinking water regulations of the New Mexico environmental improvement board. Report may show type of system, water supply system code number, water supply system name, location of water system, district, owner, maps and diagrams, photographs, point of collection, date sample collected, types and levels of contaminants, analysis of sample, correspondence, etc.

D. Retention: filed in 1.18.667.274 NMAC water supply inspection files.] [RESERVED]

[1.18.667.276 NMAC - Rp SRC Rule No. 85-01 Item No. 900, 7/8/2000; Repealed, 07/24/2006]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

This is an amendment to 1.18.790 NMAC, Section 151, effective July 24, 2006

1.18.790.151 INCIDENT REPORTS:

A. Program: technical and emergency support.

B. Maintenance system: numerical by state bureau number.

C. Description: record concerning a summary of incident(s) responded to by the New Mexico state police. Report may show suspect and victim information, demographics (i.e., DOB, social security number, height, weight, etc.), vehicle information (i.e., license number, vehicle identification number, owner information, etc.), stolen property, narrative of incident, arrest information, etc.

D. Retention:

~~(1) cases resulting in an arrest: purged when subject reaches 99 years of age or 7 years have elapsed since notification of individual's death, whichever is shorter.~~

~~(2) cases not resulting in an arrest: five years after date case closed.] 100 years from date of incident then transfer to archives for review and final disposition.~~

E. Confidentiality:

Portions of record may contain confidential information per Section 29-10-4 NMSA 1978 (i.e., arrest records), and Section 14-2-1. NMSA 1978 (i.e., "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime").
[7/16/96; 1.18.790.151 NMAC - Rn, 1 NMAC 3.2.93.790.60.102, 7/8/2000; A, 07/24/2006]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
TRANSPORTATION DIVISION**

Effective 7-17-06, the Public Regulation Commission repeals 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003).

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
TRANSPORTATION DIVISION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 60 PIPELINE CON-
STRUCTION AND MAINTENANCE**

**PART 2 PIPELINE SAFETY
GENERAL PROVISIONS**

18.60.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[18.60.2.1 NMAC - N, 7-17-06]

18.60.2.2 SCOPE: This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.
[18.60.2.21 NMAC - N, 7-17-06]

18.60.2.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-9.1, 62-14-10, and 70-3-13 NMSA 1978.
[18.60.2.3 NMAC - N, 7-17-06]

18.60.2.4 DURATION: Permanent.
[18.60.2.4 NMAC - N, 7-17-06]

18.60.2.5 EFFECTIVE DATE: July 17, 2006, unless a later date is cited at the end of a section.
[18.60.2.5 NMAC - N, 7-17-06]

18.60.2.6 OBJECTIVE: The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978, and the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978.
[18.60.2.6 NMAC - N, 7-17-06]

18.60.2.7 DEFINITIONS: In addition to the definitions in 49 CFR Parts 40, 190, 191, 192, 195, and 199, and Sections 62-14-2 and 70-3-12 NMSA 1978, as used in these rules:

A. applicable laws means the Hazardous Liquid Pipeline Safety Act, 49 USC Sections 2001 et seq; the Hazardous Materials Transportation Act, 49 USC Sections 1801 et seq; the Natural Gas Pipeline Safety Act, 49 USC Sections 60101 et seq; Chapter 62, Article 14 NMSA 1978; the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978; these rules, and commission orders issued pursuant to them;

B. director means the director of the transportation division of the New Mexico public regulation commission or his designee;

C. staff means the staff of the pipeline safety bureau of the transportation division of the public regulation commission; and

D. these rules means Title 18, Chapter 60.
[18.60.2.7 NMAC - Rp, 18.60.2.7 NMAC, 7-17-06]

18.60.2.8 ADOPTION OF PORTIONS OF THE CODE OF FEDERAL REGULATIONS:

A. Adoption by reference. Except for the variances set forth in Subsection B of this section, the commission adopts the following portions of the code of federal regulations, as such may be amended from time to time, pertaining to gas and hazardous liquid pipeline operators and facilities, and concerning the health, safety, and welfare of persons and property in New Mexico, as part of this rule:

(1) pipeline safety programs and procedures. 49 CFR 190.5, 190.233(a) and (b), and 190.237;

(2) annual, incident, and safety related condition reports. 49 CFR Part 191;

(3) minimum federal safety standards. 49 CFR Part 192;

(4) transportation of hazardous liquids by pipeline, 49 CFR Part 195;

(5) drug and alcohol testing, 49 CFR Parts 40 and 199.

B. New Mexico variances to adopted federal regulations.

(1) The reporting threshold in New Mexico shall be \$5,000 instead of the \$50,000 reporting threshold established in 49 CFR 191.3.

(2) Leakage surveys of transmission lines in New Mexico shall be conducted using leak detection equipment but shall otherwise be conducted in accordance with 49 CFR 192.706(b).

C. Interpretation of references and terms in federal regulations.

(1) References in the code of federal regulations to "state agency" shall be deemed references to the transportation division of the New Mexico public regulation commission;

(2) References in 49 CFR 190.233(a) and (b) to the "associate administrator, OPS" shall be deemed references to the director of the transportation division of the New Mexico public regulation commission; and

(3) References in 49 CFR 190.233(a) and (b) to 49 CFR 190.233(c), 49 CFR 190.233(c)(2), or 49 CFR 190.233(g) shall be deemed references to 18.60.4.9 NMAC through 18.60.4.15 NMAC.

(4) References in 49 CFR 192.723(b)(1) to "business district" shall have the meaning given by the United States department of transportation in correspondence interpreting the term.

[18.60.2.8 NMAC - Rp, 18.60.2.8 NMAC, 7-17-06]

18.60.2.9 NOTICE OF INTENT TO CONSTRUCT: Prior to the start of construction of any new or replacement intrastate natural gas pipeline with a total construction value of \$50,000 or more,

the operator of such pipeline shall give written notice of its intent to construct to the Transportation Division Director, Post Office Box 1269, Santa Fe, New Mexico, 87504-1269. The notice of intent to construct shall state:

- A. the pipe material;
- B. the finished diameter, length, and approximate location of the pipeline;
- C. the size and capacity of any compressors or pumps;
- D. and the contemplated date construction will commence.

[18.60.2.9 NMAC - Rp, 18.60.2.18 NMAC, 7-17-06]

18.60.2.10 REPORTS OF MASTER METERS: Annually, by March 15, each owner or operator of a gas distribution or transmission system shall report to the director the name, address, and location of any master meter operator connected to its facilities.

[18.60.2.10 NMAC - Rp, 18.60.2.19 NMAC, 7-17-06]

18.60.2.11 OPERATION AND MAINTENANCE MANUAL: Each owner or operator of gas or hazardous liquid pipeline facilities in New Mexico, whether above ground or underground, shall file with the director a manual prescribing its procedures for emergencies and for inspection and maintenance of each pipeline facility it owns or operates and a plan for classification and repair of leaks consistent with 18.60.2.12 NMAC. Any change to procedures set forth in the manual must be filed with the director within twenty (20) days after the change is made.

[18.60.2.11 NMAC - Rp, 18.60.2.21 NMAC, 7-17-06]

18.60.2.12 CLASSIFICATION AND REPAIR OF LEAKS: Immediately upon discovery, and in accordance with generally accepted industry criteria, an owner or operator shall classify a leak as:

- A. a hazardous leak, grade I or C, if it is a leak which, due to its location and/or magnitude, constitutes an immediate hazard to persons or property;
- B. a potentially hazardous leak, grade II or B, if it is a leak that does not constitute an immediate hazard, but may become hazardous if not repaired within a reasonable time period; or
- C. a non-hazardous leak, grade III or A, if it is a leak which does not constitute a hazard and shows no indication of becoming hazardous before routine scheduled repair could be accomplished.

[18.60.2.12 NMAC - Rp, 18.60.2.22 NMAC, 7-17-06]

18.60.2.13 OIL PIPELINE TAR-

IFFS:

A. An owner or operator of an oil pipeline shall file with the commission at least ten (10) days prior to its effective date two (2) copies of its tariff covering intrastate movements within New Mexico.

B. An owner or operator of an oil pipeline shall file with the commission at least ten (10) days prior to its effective date two (2) copies of any changes to its tariff.

C. If an owner or operator of an oil pipeline assesses separate charges for the gathering of oil and for its transportation and delivery, the charges shall be separately specified in its tariff.

D. In determining whether an oil pipeline's rates for the transportation of oil are reasonable, the commission shall consider:

- (1) the actual costs to transport;
- (2) market factors;
- (3) the range of rates being charged by other oil pipelines for similar services;
- (4) any other factors the commission deems relevant.

[18.60.2.13 NMAC - N, 7-17-06]

History of 18.60.2 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the commission of public records-state records center and archives.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by

Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03. 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.2 NMAC, Pipeline Safety General Provisions, effective 7-17-06.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**

TRANSPORTATION DIVISION

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 60 PIPELINE CON-
STRUCTION AND MAINTENANCE
PART 4 PIPELINE SAFETY
ENFORCEMENT PROCEDURES**

18.60.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[18.60.4.1 NMAC - N, 7-17-06]

18.60.4.2 SCOPE: This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.

[18.60.4.2 NMAC - N, 7-17-06]

18.60.4.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-9.1, 62-14-10, and 70-3-13 NMSA 1978.

[18.60.4.3 NMAC - N, 7-17-06]

18.60.4.4 DURATION: Permanent.

[18.60.4.4 NMAC - N, 7-17-06]

18.60.4.5 EFFECTIVE DATE: July 17, 2006, unless a later date is cited at the end of a section.

[18.60.4.5 NMAC - N, 7-17-06]

18.60.4.6 OBJECTIVE: The purpose of this rule is to prescribe procedures to administer and enforce Chapter 62, Article 14 NMSA 1978, and the Pipeline

Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978.

[18.60.4.6 NMAC - N, 7-17-06]

18.60.4.7 DEFINITIONS: In addition to the definitions in 18.60.2.7 and 18.60.5.7 NMAC, as used in this rule, **respondent** means an owner or operator of gas and hazardous liquid pipelines or underground facilities, an excavator, or a one-call notification system.

[18.60.4.7 NMAC - Rp, 18.60.2.7 NMAC, 7-17-06]

18.60.4.8 INSPECTIONS AND INVESTIGATIONS:

A. Pipelines.

(1) Staff is authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, those records and pipeline facilities of an owner or operator relevant to determining whether the owner or operator is in compliance with applicable laws.

(2) Staff may conduct an inspection pursuant to:

(a) scheduling by staff;

(b) a written complaint received from a member of the public;

(c) information obtained from a previous inspection;

(d) an accident or incident; or

(e) whenever the commission or the director deems it appropriate.

(3) If, after an inspection, staff believes that further information is needed to determine appropriate action, staff may send a request for specific information to the owner or operator. The owner or operator shall answer the request within thirty (30) days of its receipt.

(4) The commission may, subject to applicable laws, require testing of portions of facilities that have been involved in, or affected by, an accident. The commission shall make every effort to negotiate with the owner or operator of the facility a mutually acceptable plan for performing the testing.

(5) When the information obtained from an inspection or from other appropriate sources indicates that further commission action is warranted, the director shall issue a notice of probable violation or notice of intent to issue a hazardous facility order, as appropriate.

B. Excavation. A one-call notification system, underground facility operator, excavator, or project owner, as appropriate, shall, upon reasonable notice and presentation of identification, grant staff access to:

(1) an excavation site for the purpose of previewing, observing, or examining an excavation activity;

(2) all records pertaining to an excavation activity that are in the possession

of the one-call notification system, underground facility operator, excavator, or project owner.

[18.60.4.8 NMAC - Rp, 18.60.2.9 NMAC, 7-17-06]

18.60.4.9 SERVICE OF

PROCESS: Whenever this rule requires notice or other process to be served on a respondent, the notice or other process shall be served at the last known address of the respondent.

[18.60.4.9 NMAC - Rp, 18.60.2.10 NMAC, 7-17-06]

18.60.4.10 NOTICE OF PROBABLE VIOLATION:

A. Except as otherwise provided in Section 70-3-19 NMSA 1978, the director shall begin an enforcement proceeding by serving a notice of probable violation on the respondent.

B. The director may serve a notice of probable violation of applicable laws through staff on the respondent or the respondent's agent at an excavation site. In such case, the director shall also serve the notice of probable violation by mail on the respondent as prescribed in 18.60.4.9 NMAC.

C. A notice of probable violation shall include a statement of those provisions of applicable laws that the respondent is alleged to have violated, a statement of the evidence upon which the allegations are based, a statement that the respondent may request a settlement conference within fifteen (15) days of receipt of the notice of probable violation, and instructions regarding how the respondent may request a settlement conference. A respondent shall respond to the allegations in writing within fifteen (15) days of receipt of the notice of probable violation. The director may, in his discretion and in accordance with applicable laws, grant or deny a request for a settlement conference.

D. If, in his discretion, the director determines that a settlement conference would be useful, the notice of probable violation shall also contain a date, time and location for a settlement conference, and a statement that if the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation.

E. The director may amend a notice of probable violation at any time prior to issuance of a final order.

[18.60.4.10 NMAC - Rp, 18.60.2.11 NMAC, 7-17-06]

18.60.4.11 ATTORNEY REPRESENTATION. In settlement conferences, dispositional hearings, commission hearings conducted pursuant to this rule, and arbitrations and mediations conducted pur-

suant to 18.60.5 NMAC, respondents shall be represented as provided in this section.

A. An individual or sole proprietorship shall appear in person on his or her own behalf or may be represented by an attorney.

B. A partnership with fewer than ten (10) partners, whether limited or general, who are all natural persons, may appear and be represented by an attorney or by a general partner or manager who has been authorized by the general partnership to do so.

C. A limited liability company with fewer than ten (10) members, who are all natural persons, may appear and be represented by an attorney or by a manager or member who has been authorized by the limited liability company to do so.

D. A corporation whose voting shares are held by a single shareholder or closely knit group of shareholders who are all natural persons active in the operation of the business may appear and be represented by an attorney or by an officer or manager who has been authorized by the corporation to do so.

E. All other persons shall be represented by an attorney.

[18.60.4.11 NMAC - N, 7-17-06]

18.60.4.12 SETTLEMENT

CONFERENCES: The director may conduct a settlement conference with the respondent at the date, time and in the manner set forth in the notice of probable violation, or at such other time agreed to by the director and the respondent. At the settlement conference, the director shall explore with the respondent the facts of the probable violation and the possibility of reaching an agreed upon resolution, which may include dismissal or a voluntary settlement agreement with administrative or civil penalties or other sanctions.

A. Voluntary dismissal. If the director and respondent agree to dismiss the notice of probable violation, the director shall issue a letter dismissing the probable violation which shall resolve the matter.

B. Voluntary settlement agreement. If the director and respondent agree to settle, the director and respondent shall enter into and sign a written settlement agreement which shall resolve the matter. The written settlement agreement shall include any administrative or civil penalties or other sanctions and the respondent's knowing waiver of his right to a formal hearing.

C. Failure to settle. If the respondent appears at the settlement conference but does not agree to terms and conditions that are satisfactory to the director, the director may request a hearing before the commission pursuant to 18.60.4.14 NMAC

or file a petition in district court for injunctive action.

D. Failure to appear. If the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation. Within ten (10) days, the director may serve on respondent a determination of violation. The determination shall include notice of the respondent's right to appeal pursuant to 18.60.4.14 NMAC and may include notice of a dispositional hearing pursuant to 18.60.4.13 NMAC.

E. Alternative procedures. The director may give notice of a dispositional hearing, request a hearing before the commission, or file a petition in district court for injunctive action without offering to hold a settlement conference. [18.60.4.12 NMAC - Rp, 18.60.2.12 NMAC, 7-17-06]

18.60.4.13 DISPOSITIONAL HEARINGS:

A. Notice. Not less than twenty (20) days prior to the date of the dispositional hearing, the director shall serve on the respondent notice of the dispositional hearing and copies of the notice of probable violation, staff's inspection reports, and any third party complaints or damage reports by mail as prescribed by 18.60.4.9 NMAC. The notice shall state in boldface type that failure to appear at the dispositional hearing may result in the issuance of a default disposition and administrative or civil penalties or other sanctions.

B. Procedures.

(1) The director shall appoint a person or a panel to hear the case, or may hear the case himself or herself.

(2) The dispositional hearing shall be recorded by mechanical or electronic means and the director, or person or panel conducting the hearing, shall determine if the record shall be transcribed.

(3) If the director does not hear the case himself or herself, the person or panel conducting the dispositional hearing shall issue a recommended disposition to the director setting forth findings of fact, the amount of any administrative or civil penalties, and any other sanctions.

C. Disposition. The director shall promptly act on the recommended disposition. The director's disposition shall include:

- (1) findings of fact;
- (2) the amount of the penalty and the procedure for its payment, if an administrative or civil penalty is assessed;
- (3) a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished; and
- (4) a statement that the respondent may appeal the director's disposition

by filing a request for a hearing before the commission pursuant to 18.60.4.14 NMAC.

D. Failure to appear. If the respondent fails to appear for the dispositional hearing, the director may issue a default disposition, which may include administrative or civil penalties or other sanctions.

[18.60.4.13 NMAC - N, 7-17-06]

18.60.4.14 HEARINGS BEFORE THE COMMISSION:

A. Request for hearing.

(1) **By the director.** At any time after the notice of probable violation has been served on the respondent, the director may request a hearing before the commission.

(2) **By the respondent.** A respondent may appeal a determination made by the director pursuant to Subsection D of 18.60.4.12 NMAC or a disposition made by the director pursuant to 18.60.4.13 NMAC by filing a request for hearing before the commission. The respondent shall file the appeal with the docket filing unit of the commission within thirty (30) days of the date the director's determination or disposition is mailed to the respondent. The appeal shall be in writing and signed by the respondent and shall set forth the factual basis for the appeal and the nature of the relief requested. An appeal may request a stay of the director's determination or disposition pending a decision of the commission.

B. Notice of hearing. The commission shall:

(1) fix a time and location for a public hearing on the alleged violations; and

(2) serve notice of the hearing upon the respondent by mail as prescribed by 18.60.4.9 NMAC not less than ten (10) days prior to the date of the hearing with copies of the notice of probable violation, staff's inspection reports, and any third party complaints or damage reports. The notice shall state in boldface type that failure to appear at the hearing may result in a default judgment and the imposition of administrative or civil penalties or other sanctions.

C. Hearing procedures. The commission may appoint a hearing examiner or may hear the matter itself. The commission or hearing examiner shall conduct the hearing in accordance with the PRC rules of procedure. If a hearing examiner conducts the hearing, the hearing examiner shall submit to the commission a recommended decision with findings of fact and conclusions of law.

[18.60.4.14 NMAC - Rp, 18.60.2.13 and 18.60.2.14 NMAC, 7-17-06]

18.60.4.15 STIPULATION:

A. At any time before the

issuance of a final order, the director and the respondent may agree to resolve a case by stipulation. The stipulation may include assessment or waiver of a civil or administrative penalty or other sanctions.

B. A stipulation shall include:

(1) an admission by the respondent of all jurisdictional facts;

(2) an express waiver of the right to pursue further procedural remedies before the commission and of the right to seek judicial review or otherwise challenge or contest the validity of the stipulation;

(3) an acknowledgement that the notice of probable violation may be used to construe the terms of the stipulation;

(4) an acknowledgement that the stipulation will be considered a violation for purposes of penalties for subsequent violations; and

(5) a statement of the actions to be taken by the respondent and the time by which each action shall be accomplished.

C. If a case is resolved by stipulation, staff shall file a motion requesting approval of the stipulation and closing of the case.

[18.60.4.15 NMAC - Rp, 18.60.2.15 NMAC, 7-17-06]

18.60.4.16 FINAL ORDER:

After a hearing, and the consideration of any exceptions pursuant to the PRC rules of procedure, the commission shall issue a final order that includes:

A. findings of fact and conclusions of law;

B. the amount of the penalty and the procedure for its payment, if a civil or administrative penalty is assessed; and

C. a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished.

[18.60.4.16 NMAC - Rp, 18.60.2.16 NMAC, 7-17-06]

18.60.4.17 PAYMENT OF PENALTY:

A. A respondent shall pay an administrative or civil penalty agreed to in a voluntary settlement agreement or assessed in a director's disposition or commission final order by certified check or money order made payable to the New Mexico Public Regulation Commission and shall submit the payment to the address provided by the commission.

B. If a respondent fails to pay the full amount of an administrative or civil penalty within twenty (20) days of receipt of a director's disposition or commission final order, or other time frame specified in the disposition or order, the commission or director may file an action in

district court to collect the assessed penalty. [18.60.4.17 NMAC - Rp, 18.60.2.17 NMAC, 7-17-06]

18.60.4.18 REFERRAL FOR PROSECUTION: If an employee of the transportation division of the New Mexico public regulation commission becomes aware of any actual or possible activity subject to criminal penalties under Section 70-3-19 NMSA 1978, the employee shall report such actual or possible activity to the office of the attorney general for the state of New Mexico.

[18.60.4.18 NMAC - Rp, 18.60.2.26 NMAC, 7-17-06]

History of 18.60.4 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the Commission of Public Records-State Records Center and Archives.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18

NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03. Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.4 NMAC, Pipeline Safety Enforcement Procedures, effective 7-17-06.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
TRANSPORTATION DIVISION**

**TITLE 18 TRANSPORTATION
AND HIGHWAYS
CHAPTER 60 PIPELINE CON-
STRUCTION AND MAINTENANCE
PART 5 PIPELINE SAFETY
EXCAVATION DAMAGE PREVEN-
TION**

18.60.5.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[18.60.5.1 NMAC - N, 7-17-06]

18.60.5.2 SCOPE: This rule applies to all one-call notification systems, excavators, and owners and operators of pipelines and other underground facilities in New Mexico subject to the jurisdiction of the commission.

[18.60.5.2 NMAC - N, 7-17-06]

18.60.5.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-7.1, 62-14-10, 70-3-4, and 70-3-13 NMSA 1978.

[18.60.5.3 NMAC - N, 7-17-06]

18.60.5.4 DURATION: Permanent.

[18.60.5.4 NMAC - N, 7-17-06]

18.60.5.5 EFFECTIVE DATE: July 17, 2006, unless a later date is cited at the end of a section.

[18.60.5.5 NMAC - N, 7-17-06]

18.60.5.6 OBJECTIVE: The purpose of this rule is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing excavation damage and for dealing with damage when it occurs.

[18.60.5.6 NMAC - N, 7-17-06]

18.60.5.7 DEFINITIONS: In addition to the definitions in Section 62-14-2 NMSA 1978, as used in this rule:

A. access information means a telephone number, a facsimile number, an email address, and, if available, a website address;

B. bid locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons bidding on a project;

C. design locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons designing a project;

D. excavation locate means the marking of underground facilities at the request of an excavator for the purpose of providing information to an excavator working on a project;

E. holiday means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr's, Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;

F. non-member UFO means a UFO that is not a member of a one-call system;

G. project owner means the owner of a project involving excavation or the person designated by the owner to be in charge of the project involving excavation;

H. road maintenance means routine grading and resurfacing of the earth and gravel surface, but not the sub-base, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four (4) inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed;

I. underground facility operator (UFO) means a person who operates an underground facility; and

J. working day means a twenty-four (24) hour period excluding weekends and holidays.

[18.60.5.7 NMAC - N, 7-17-06]

18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS: A one-call notification system shall:

A. provide toll-free access;

B. provide to the commission quarterly the name, contact person, and access information for each member of the one-call notification system;

C. notify the commission of the service area in which the one-call notification system operates;

D. have a written coordination agreement with other one-call notification systems operating in New Mexico;

E. keep a record of all locate requests, tickets, and clears for five

(5) years and make such records available to the commission upon request;

F. report to the commission quarterly the:

(1) average wait time for answered calls for each month in the quarter;

(2) number of calls received for each month in the quarter;

(3) number of tickets generated for each month in the quarter;

(4) number of requests by type (regular, priority, emergency) for each month in the quarter;

G. report any changes in access information to the commission on or before the date the information will change;

H. inform any person who calls with a complaint that he or she may file a complaint with the commission, and provide the commission's access information, if the one-call system is unable to satisfactorily resolve the matter.

[18.60.5.8 NMAC - N, 7-17-06]

18.60.5.9 RESPONSIBILITIES OF UFOs:

A. All UFOs.

(1) A UFO shall report any changes in access information to the commission on or before the date the information will change.

(2) A UFO shall keep a record of all locate requests and make such records available to the commission upon request.

(3) A UFO shall retain records of locate requests and excavation notices for a period of five (5) years.

(4) A UFO that utilizes contractors to perform locate and excavation activities on its behalf shall be responsible for compliance with the law and these rules.

B. Non-member UFOs.
A non-member UFO shall:

(1) continuously advise the general public and excavators known to work in the area where the non-member UFO's underground facilities exist of:

(a) the requirement to submit a request for a locate at least two (2) working days prior to commencing any excavation;

(b) the local or toll-free telephone number or other authorized contact method for submitting locate requests; and

(c) the local or toll-free telephone number for reporting damage or an emergency situation to the non-member UFO;

(2) at a minimum, provide telephone access at no cost to an excavator during normal business hours Monday to Friday, excluding holidays.

[18.60.5.9 NMAC - N, 7-17-06]

18.60.5.10 LOCATE REQUESTS: An excavator shall make an excavation locate request for all projects involving excavation, including road main-

tenance.

A. Submittal.

(1) **One-call notification systems.** An excavator shall submit an excavation locate request to each one-call notification system:

(a) by telephone or in person during normal business hours Monday to Friday, excluding holidays; or

(b) by facsimile or electronically twenty-four hours a day, seven days a week.

(2) **Non-member UFOs.** An excavator shall also submit an excavation locate request to each non-member UFO.

B. Size of locate requests.

(1) An excavator shall determine the maximum area that he can reasonably expect to excavate within a ten (10) working day period and shall request an excavation locate for that area only.

(2) An excavator may request relocates for the same area only if justified by the circumstances and nature of the work; such justification shall be made part of the relocate request.

C. Minimum information required. When requesting an excavation locate or a locate conference, an excavator shall comply with the requirements of the one-call notification system or non-member UFO operating in the intended excavation area and shall provide accurate and truthful information. A locate request shall be deemed incomplete if it does not contain, at a minimum:

(1) the name and contact information of the excavator;

(2) a description and the purpose of the type of work to be done;

(3) the name of the person for whom the work is being done;

(4) whether or not the excavation site is pre-marked in white;

(5) an accurate physical description of the location and size of the excavation site. Reference to a plat of a subdivision shall not by itself be sufficient description;

(6) driving instructions to a rural excavation site;

(7) spotting instructions;

(8) any appropriate remarks regarding access to or hazards at the site.

D. Processing.

(1) A one-call notification system or non-member UFO may hold a locate request in suspension until it is complete. The one-call notification system or non-member UFO shall contact an excavator within three (3) hours to request any missing information that prevents the one-call notification system or non-member UFO from processing the request.

(2) A one-call notification system or non-member UFO shall process all complete locate requests within three (3) hours

of receipt. A one-call notification system or non-member UFO shall deem locate requests received on a weekend or holiday, or after 4:00 pm on a working day, to have been received at 7:00 am on the next working day and shall deem locate requests received before 7:00 am on a working day to have been received at 7:00 am on that working day.

(3) Upon receipt of a complete locate request:

(a) a one-call notification system shall issue a ticket with a unique number to the requesting excavator as confirmation; a one-call notification system shall send a ticket to all members of the system that have underground facilities in the excavation area, or notify members by telephone; a ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked "wide area conference," "bid conference," or "design conference," as appropriate;

(b) a non-member UFO shall provide, by telephone, facsimile, or e-mail, confirmation of receipt and a unique confirmation number to the requesting excavator, followed by a written confirmation of receipt if the initial confirmation was made by telephone; the confirmation shall be the equivalent of a ticket and shall be effective at the date and time the non-member UFO initially contacts the excavator.

[18.60.5.10 NMAC - N, 7-17-06]

18.60.5.11 WIDE AREA LOCATE REQUESTS: An excavator who expects a project to take more than ten (10) working days to complete shall either request separate locates which meet the requirements of Subsection B of 18.60.5.10 NMAC or follow the conference procedure set forth in this section.

A. If an excavator expects that an excavation will take more than ten (10) working days to complete, the excavator shall contact the one-call notification system and non-member UFOs to request a wide area conference. The one-call notification system and non-member UFOs shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

B. A UFO shall contact an excavator who requests a wide area conference within two (2) working days of the issuance of the conference ticket to schedule a conference.

C. At the conference, the excavator shall develop a written work plan in concert with each UFO, which shall be signed by all parties. Updates or revisions to the work plan shall also be in writing and signed by all parties.

D. After the work plan has been developed, an excavator shall request

a wide area excavation locate. The one-call notification system or non-member UFO shall process the request as provided in Subsection D of 18.60.5.10 NMAC. The excavation ticket shall reference the wide area conference ticket number and cite the work plan as the description of the work to be performed.

E. An excavator working pursuant to a wide area excavation locate ticket shall request reaffirmation of the ticket every ten (10) working days for the duration of the ticket. For the purpose of reaffirmation, a working day begins on the date and time stamped on the ticket and ends ten (10) working days from such date and time. Unless the excavator states that the existing markings are sufficient for the time being, a UFO shall verify that existing markings are still visible, refresh them if needed, and continue to locate according to the work plan.

[18.60.5.11 NMAC - N, 7-17-06]

18.60.5.12 DESIGN AND BID LOCATE REQUESTS: A project owner shall request information regarding the location of underground facilities in accordance with either Subsection A or B of this section, but may not switch methods once having made an election.

A. Physical locates.

(1) A project owner may request from one-call notification systems and non-member UFOs a design locate or a bid locate.

(2) The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

(3) UFOs shall physically mark the location of underground facilities on the site within two (2) working days from the date of the ticket.

(4) Designers or bidders, as appropriate, shall capture data from the site within ten (10) working days from the end of the two day marking period.

(5) A project owner shall not request relocates or time extensions.

B. Conferences.

(1) A project owner may request from the one-call notification system for the intended excavation area and non-member UFOs a design conference or bid conference with UFOs.

(2) The one-call notification system for the intended excavation area shall process the request as provided in Subsection D of 18.60.5.10 NMAC.

(3) UFOs shall contact the project owner within two (2) working days to arrange to provide information to designers or bidders within a reasonable time.

(4) A project owner and UFOs shall continue coordinating until the bid for

the project has been awarded and an excavator requests an excavation locate.

[18.60.5.12 NMAC - N, 7-17-06]

18.60.5.13 MARKING EXCAVATION SITES:

A. Excavators. The commission encourages excavators to mark all proposed excavation sites in accordance with American public works association (APWA) standards. In assessing administrative penalties for damage to underground facilities, the commission may consider whether and how well an excavator marked a proposed excavation site.

B. UFOs.

(1) A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

(2) A UFO shall locate and mark its underground facilities within two (2) working days from the effective date of the ticket.

(3) If it does not have underground facilities at the excavation site, a UFO may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color. Alternatively:

(a) a UFO that is a member of the one-call notification system for the intended excavation area may contact the one-call notification system within two (2) working days to report it has no underground facilities;

(b) a non-member UFO may:

(i) if it receives a locate request by telephone, and can determine at the time of the call that it has no underground facilities in the intended excavation area, so inform the excavator at the time of the call;

(ii) contact the excavator directly by telephone, facsimile, or email, within two (2) working days to report it has no underground facilities;

(iii) in either case, both the non-member UFO and the excavator shall document the notification.

(4) The locate markings shall be valid for ten (10) working days from the end of the two (2) day marking period. For the purpose of excavation, a working day begins on the date and time stamped on the ticket and ends twelve (12) working days from such date and time.

(5) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator in accordance with Subsection C of 62-14-5 NMSA 1978. [18.60.5.13 NMAC - N, 7-17-06]

18.60.5.14 IDENTIFYING UNDERGROUND FACILITIES FOR ROAD MAINTENANCE: In response to an excavation locate request for road maintenance, a UFO shall physically mark its

underground facilities that are parallel to the road, as provided in Subsection A, and shall either physically mark or locate by marker its underground facilities that cross the road, as provided in Subsection B.

A. Underground facilities parallel to road. A UFO shall physically mark the location of all underground facilities located parallel to the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure set forth in 18.60.5.13 NMAC.

B. Underground facilities that cross the road.

(1) **Physical locate.** A UFO may physically mark the location of all underground facilities that cross the road to be maintained if the UFO deems the facilities to be in conflict with the road maintenance activity. If the UFO deems the facilities not to be in conflict with the road maintenance activity, then the UFO may "clear" the ticket with the excavator using the procedure for positive response set forth in 18.60.5.13 NMAC.

(2) **Locate by marker.** Alternatively, a UFO may use a system of markers to indicate the location of underground facilities that cross the road to be maintained. Such markers shall:

(a) only be used to mark underground facilities that cross the road to be maintained and only for the purposes of road maintenance;

(b) be durable enough to withstand normal weathering;

(c) be the same APWA color as is designated for marking the UFO's type of underground facility; and

(d) have a decal on the marker specifying the depth of the underground facility at the marker.

C. Maintenance of markers. A UFO shall be deemed to have failed to correctly mark its underground facility that crosses a road to be maintained unless it:

(1) ensures that the markers are in place;

(2) maintains a minimum twenty-four (24) inches of coverage over the underground facility that crosses the road;

(3) verifies the depth of its underground facilities at the markers at least annually; and

(4) ensures that the decal is visible and the information on it is readable.

[18.60.5.14 NMAC - N, 7-17-06]

18.60.5.15 EXCAVATION PROCEDURES:

A. Pre-excavation. Before excavating, an excavator shall deter-

mine whether all underground facilities have been marked.

(1) If all underground facilities have been marked and the two (2) working day marking period has expired, the excavator may begin excavating.

(2) If one or more underground facilities have not been marked, an excavator shall, prior to commencing excavation, call:

(a) the one-call notification system for the intended excavation area if the UFO is a member of the one-call notification system; or

(b) any non-member UFOs operating in the intended excavation area.

B. Excavation.

(1) If, while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence,

(a) make a reasonable effort to identify and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; the UFO shall mark or clear the area within two (2) hours of contact or as expeditiously as possible if the excavation site is in a rural area; or

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities.

C. Temporary suspension of excavation activity. If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.

[18.60.5.15 NMAC - N, 7-17-06]

18.60.5.16 E M E R G E N C Y EXCAVATION PROCEDURE: This section applies whenever damage to underground facilities or public infrastructure threatens or causes interruption of utility services or use of the public infrastructure.

A. Excavators. An excavator who damages an underground facility while excavating shall exercise prudence and shall:

(1) stop excavating immediately;
(2) call 911 if appropriate and/or the operator of the damaged underground facility;

(3) secure the site and direct people and traffic a safe distance away from the site of the damage;

(4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;

(5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

B. Operators of damaged underground facilities. The operator of a damaged underground facility shall exercise prudence and shall:

(1) promptly respond to a report of damage to its underground facilities and travel to the site of the damage;

(2) while on the way to the site or at the site, call the one-call notification system for the excavation area to request an emergency locate if damage occurs during normal business hours;

(3) make the site safe and get the emergency situation under control;

(4) locate its own underground facilities as soon as practical, ideally within two (2) hours; and

(5) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

C. Operators of damaged public infrastructure. The entity responsible for the damaged public infrastructure shall:

(1) call the one-call notification system for the excavation area to request an emergency locate if damage occurs during normal business hours;

(2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

D. One-call notification system. A one-call notification system shall upon request, issue an emergency excavation notice; an emergency excavation notice shall be valid until the emergency is resolved, or for forty-eight (48) hours, whichever is longer;

[18.60.5.16 NMAC - N, 7-17-06]

18.60.5.17 ABUSE OF THE LAW: A person shall be deemed to have willfully failed to comply with this rule or Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8 NMSA 1978 if the person:

A. requests a locate for an area that cannot reasonably be excavated in ten (10) working days;

B. provides misinformation or withholds information regarding the

size of an excavation area;

C. requests locates that unduly burden a one-call notification system or UFO;

D. requests a locate for fraudulent reasons;

E. fails to process locate requests or clears within the requisite timeframe;

F. fails to mark, or call in a clear for, its underground facilities within the requisite timeframe;

G. commences excavation prior to the expiration of the two (2) day notice period;

H. obliterates markings at an excavation site without providing temporary offset marks or stakes;

I. alters any record relating to excavation activity; or

J. commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - N, 7-17-06]

18.60.5.18 REPORTS OF THIRD PARTY DAMAGE:

A. A UFO shall report to the director, in writing, any incident in which the owner or operator's underground facility is damaged, or a person is injured by a person not employed by the owner or operator. For purposes of this subsection, incident is to be taken in its general sense and is not to be restricted to the definition given in 49 CFR 191.3.

B. The report shall include the identity of the alleged violator, if known, and all pertinent information required by the director.

C. The report shall be submitted by the 15th day of the month following the month of occurrence, or within thirty (30) days of occurrence, whichever is later.

D. The UFO shall make available to the director within a reasonable time such other information or documentation as the director may require regarding any incident reportable under this section.

[18.60.5.18 NMAC - Rp, 18.60.2.20 NMAC, 7-17-06]

18.60.5.19 ALTERNATIVE DISPUTE RESOLUTION:

A. The commission encourages owners and operators of underground facilities and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities.

B. In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities or any excavator may request

mediation or arbitration from the commission.

C. Staff may participate in mediation or arbitration proceedings.

D. In mediation and arbitration proceedings, persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC.

[18.60.5.19 NMAC - Rp, 18.60.2.23 NMAC, 7-17-06]

18.60.5.20 MEDIATION OF EXCAVATION DAMAGE DISPUTES:

A. Designation of mediator.

If any of the parties request mediation, the commission shall designate a mediator. The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual acceptable to the parties. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services. The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time the mediator is assigned by the commission and all parties agree that the mediator may serve. The mediator shall not, subsequent to serving as a mediator in an excavation damage dispute, participate in any subsequent proceeding in the same cause as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

B. Duties of mediator.

The mediator shall notify the parties by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties to send the mediator, but not other parties, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the damage. In addition, the mediator may require counsel to have their clients present at the mediation conference or accessible by telephone. The mediation conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file an action for civil liability for damages in district court.

C. Inadmissibility of set-

tlement offers. Offers of settlement and statements in furtherance of settlement made in the course of mediation are privileged and, except by agreement among all parties, shall not be admissible as evidence in any formal hearing before the commission nor disclosed by the mediator voluntarily or through discovery or compulsory process.

[18.60.5.20 NMAC - Rp, 18.60.2.24 NMAC, 7-17-06]

18.60.5.21 BINDING ARBITRATION OF EXCAVATION DAMAGE DISPUTES:

A. Request for arbitration.

Any party to a dispute arising from excavation damage to underground facilities may request binding arbitration of the dispute. The request shall be in writing to the Commission and shall include a concise statement of the grounds for the dispute, the remedy sought, and an acknowledgment that the requesting party agrees to be bound by the decision of the arbitrator. The commission shall forward the request for arbitration to all other parties and require that they submit a written response within ten (10) days of receipt of the commission's letter forwarding the request.

(1) If the other parties agree to arbitration of the dispute, they shall include in their response to the commission a concise statement of their position with regard to the merits of the dispute and an acknowledgment that they agree to be bound by the decision of the arbitrator.

(2) If the other parties will not agree to arbitration, they shall so state in their response.

(3) If the other parties either fail to respond to a request for arbitration or do not agree to arbitration, the requesting party retains the right to proceed with an action for civil liability for damages in district court.

B. Designation of arbitrator.

If all parties agree to arbitration, the commission shall designate an arbitrator. The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the dispute. The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve. The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation. If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the

parties agree in writing to bear as their own the costs of obtaining the arbitrator's services. Any employee of the commission designated to arbitrate a dispute under these provisions shall not participate in any subsequent proceeding in the same cause regarding excavation damage to underground facilities as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

C. Duties of arbitrator.

(1) The arbitrator shall render a decision in the arbitration proceeding within sixty (60) days of the date the parties approved the arbitrator, unless good cause exists to extend the time.

(2) The arbitrator shall fix a time and place for an arbitration and shall serve notice of arbitration on all parties at least ten (10) days in advance of the arbitration. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The parties may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall decide the relevancy and materiality of the evidence offered. The arbitrator shall give consideration to but shall not be bound by the New Mexico rules of evidence. No stenographic or electronic record will be made of the testimony at the hearing unless requested by a party, who shall bear the cost of the record.

(3) The arbitrator shall permit discovery only if it will not unduly complicate, burden, or impede the expeditious and informal nature of the proceeding.

(4) At the close of or soon after the hearing, the arbitrator will issue a brief written decision, which need not contain findings of fact and conclusions of law. The arbitrator's decision will be binding on the parties, but will not be deemed a decision of the Commission and shall have no precedential effect.

D. Inadmissibility of settlement offers.

Unless agreed to by all the parties, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them.

[18.60.5.21 NMAC - Rp, 18.60.2.25 NMAC, 7-17-06]

18.60.5.22

WAIVER OR VARI-

ANCE FROM RULE REQUIREMENTS:

A. The commission may, in its discretion, waive or vary any requirement of this rule whenever the commission finds that such waiver or variance would be in the public interest.

B. An excavator, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission for a waiver or variance. The petition shall be in writing and shall include:

(1) a list of those requirements which the excavator, one-call notification system, or UFO wishes to have waived or varied;

(2) an explanation and description of the specific conditions which prevent the requirement from being met; and,

(3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.

C. The commission may order a hearing on the merits of the petition.

D. An excavator, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one of more of the requirements that are the subject of the petition. [18.60.5.22 NMAC - N, 7-17-06]

HISTORY OF 18.60.5 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the commission of public records-state records center and archives.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC

60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico administrative code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03. Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.5 NMAC, Pipeline Safety Excavation Damage Prevention, effective 7-17-06.

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

16 NMAC 43.2, "Hoisting Operators Safety", filed January 2, 1997 is hereby repealed effective 07/30/06 and replaced by 16.43.2 NMAC, "Hoisting Operators Safety; Hoisting Operators Code", effective 07/30/06.

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

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 43 HOISTING OPERA-
TORS
PART 2 HOISTING OPERA-
TORS SAFETY; HOISTING OPERA-
TORS CODE**

16.43.2.1 ISSUING AGENCY: The Construction Industries Division of the Regulation and Licensing Department. [16.43.2.1 NMAC - Rp, 16 NMAC 43.2.1, 07/30/06]

16.43.2.2 SCOPE: This rule applies to all hoisting operators engaged in construction, excavation or demolition

activities within the state of New Mexico. [16.43.2.2 NMAC - Rp, 16 NMAC 43.2.2, 07/30/06]

16.43.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to Section 60-15-6 NMSA 1978, of the Hoisting Operators Safety Act (60-15-1 to 60-15-14 NMSA 1978). [16.43.2.3 NMAC - Rp, 16 NMAC 43.2.3 07/30/06]

16.43.2.4 DURATION: Permanent; until later amended, repealed or replaced. [16.43.2.4 NMAC - Rp, 16 NMAC 43.2.4, 07/30/06]

16.43.2.5 EFFECTIVE DATE: 07/30/06, unless a later date is cited at the end of a section. [16.43.2.5 NMAC - Rp, 16 NMAC 43.2.5, 07/30/06]

16.43.2.6 OBJECTIVE: The objective of the Hoisting Operators Safety Act (60-15-1 to 60-15-14 NMSA 1978) [and 16.43.2 NMAC] is to promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating hoisting equipment to be trained and licensed when employed in construction, demolition or excavation work. [16.43.2.6 NMAC - Rp, 16 NMAC 43.2.6, 07/30/06]

16.43.2.7 DEFINITIONS:
A. *Act* means the Hoisting Operators Safety Act (60-15-1 to 60-15-14 NMSA 1978).

B. *ASME* means the American society of mechanical engineers previously. *ANSI* means the American national standards institute.

C. *Demolition* means the razing or destruction of a structure.

D. *Direct supervision* means the training supervisor being in close proximity to his trainee for at least the first eighty (80) hours of supervised time, and thereafter being in visual contact with the trainee, with the supervisor being directly responsible for the trainee.

E. *HSD* means human services department.

F. *NCA* means notice of contemplated action.

G. *OSHA* means occupational safety and health administration.

H. *Seat time* is defined in Subsection K of Section 60-15-3 NMSA 1978 of the act. Included as "seat time" is time spent in preparing a written lift plan and hoisting and rigging calculations.

I. *Stipulated agreement*

means a binding agreement between the department and the operator in violation in which the operator agrees to amicably resolve certain matters and forego expensive and time-consuming litigation by entering into an agreement.

J. ULA means Uniform Licensing Act (61-1-1 to 61-1-33 NMSA 1978).

K. Additional definitions: For additional definitions, see Section 60-15-3 of the act.
[16.43.2.7 NMAC - Rp, 16 NMAC 43.2.7, 07/30/06]

16.43.2.8 LICENSE:

A. Licensure required: No person shall operate hoisting equipment in construction, demolition or excavation work when the hoisting equipment is used to hoist or lower individuals or material unless the person is licensed under the act or is exempt pursuant to Subsection M of Section 60-15-3 NMSA 1978.

B. Description of license: The license issued by the department shall include, as a minimum: license number; expiration date of license; license classification and endorsement(s); licensee's name, address, and signature; and authorized signature of the designated representative of the issuing agency.

C. Initial license period: An initial license shall be valid for two (2) years from the date of issuance.

D. Examination requirements: A person must take the written general examination and law and safety examination as approved by the council. A person must also take a practical examination as approved by the council if the experience necessary to operate hoisting equipment is not met as provided in Paragraph (4) of Subsection A and Paragraph (4) of Subsection B of Section 60-15-7 NMSA 1978.

E. Validity: A license issued under the act and these rules is valid throughout the state of New Mexico. A license is valid only for the classification and endorsement(s) for which it is issued.

F. Possession: The licensee must have their license in their possession and on their person at all times while engaged in the operation of hoisting equipment or any activity covered by the act.

G. Proof of license: If a hoisting operator is asked for proof of licensure by an inspector or investigator designated by the department, the operator shall produce his hoisting operator's license accompanied by a current motor vehicle driver's license or photo identification card as verification.

H. Non-assignable and non-transferable: A license may be used

legally only by the person to whom it is issued; it may not be transferred or assigned.

I. Lost license: If a license is lost, destroyed or mutilated, the licensee shall immediately deliver to the department a written statement setting forth the circumstances surrounding the loss, destruction or mutilation of the license, and a fee as set forth in Subsection J of 16.43.2.24 NMAC of these rules for the issuance of a duplicate license.

[16.43.2.8 NMAC - Rp, 16 NMAC 43.2.8.1, 07/30/06]

16.43.2.9 IN-HOUSE TRAINING:

A. A person who has successfully completed an in-house training course approved by the council may operate hoisting equipment without a license as required by 16.43.2.8 NMAC for one year after successful completion of that course. At the expiration of that one year, the person shall be licensed pursuant to Section 60-15-7 NMSA 1978, except that the requirement for passing a written general examination pursuant to that section shall be waived.

B. An individual that has successfully completed an in-house training course approved by the council prior to the effect of 16.43.2 NMAC (July 30, 2006) shall be licensed no later than June 30, 2007 pursuant to Section 60-15-4 NMSA 1978 of the act.

C. Employer responsibility: An employer choosing to exempt its employees from the licensing requirements of the act for that one year pursuant to Subsection A of 16.43.2.9 NMAC by offering an in-house training course for its employees, as provided for in Section 60-15-4 NMSA 1978 of the act, shall be responsible for the qualifications, capability, experience, physical condition, and actions of its hoisting operators.

D. Standards for approval of training course: The council shall determine whether a course is industry-recognized and based on ASME and OSHA standards for hoisting operators.

E. Approval of training course:

(1) Any employer, person or organization wishing to offer an in-house training course to hoisting operator companies in this state shall first obtain written approval of the course from the council. The request must be submitted on a council approved form containing a complete description of the program content and examination and instructor(s) qualifications and a non-refundable application fee as approved by the council.

(2) After review of the documents submitted, the council shall indicate in writ-

ing its approval or reason for disapproval of the course. The council shall notify the employer, person or organization in writing of the approval or disapproval of the proposal within 90 days of submission of the course description and instructor(s) qualifications. Upon approval, the employer, person or organization shall submit to the council a non-refundable certification fee as approved by the council.

(3) The certification shall be for a period of two (2) years.

(4) Any employer, person or organization wishing to renew certification shall submit documentation and fees as approved by the council.

(5) Any employer, person or organization offering a council approved in-house training course prior to July 30, 2006 shall be allowed to continue offering that in-house training program until June 30, 2007, at which point, the approved training provider shall be subject to all renewal procedures and rules as outlined in Subsection K of 16.43.2.24 NMAC.

F. List of approved training courses: The council shall publish a list of all approved providers and approved instructor(s) for each course and shall update that list whenever any party is added to or deleted from the list.

G. Certificates/certificate holders: Any entity granted an exemption for in-house training of its hoisting operators under this section shall:

(1) issue a wallet-size certificate to each of its hoisting operators who successfully completes the in-house training course; such certificate shall contain, at a minimum: name, address and authorized signature of entity; name, address, and signature of certificate-holder; certificate number; classification; date of issuance and date of expiration;

(2) furnish in writing to the department a list of its certificate-holders and the number and date of issuance of each certificate within thirty (30) days of the completion of training and shall furnish immediately in writing to the department any addition to or deletion from the list.

H. Possession: A hoisting operator who is issued an exemption certificate shall have the certificate in his possession and on his person at all times while engaged in the operation of hoisting equipment or any activity covered by this act.

I. Non-assignable and non-transferable: An exemption certificate shall be valid only for the person to whom it is issued; it may not be transferred or assigned.

J. Validity: An exemption certificate shall be valid for no more than one (1) year and shall be non-renewable.
[16.43.2.9 NMAC - Rp, 16 NMAC 43.2.8.2, 07/30/06]

16.43.2.10 APPLICATION PROCEDURE:**A. Application for licensure:**

(1) Each applicant for licensure must submit appropriate documentation as specified in 16.43.2.11 NMAC; 16.43.2.12 NMAC; or 16.43.2.13 NMAC of these rules to the department.

(2) The filing date of the application shall be deemed to be the date the envelope is postmarked or, if hand-delivered, the date it is received and date-stamped in the department office.

B. Period of validity: If for any reason all requirements for licensure are not completed by the applicant within six (6) months after the date of filing his application, the application shall be deemed withdrawn. The applicant then shall be required to reapply for licensure and pay a new application fee.

C. Licensure in lesser classification: If the department finds that an applicant is ineligible for licensure in the applied-for classification because of experience or other deficiency, the department may offer the applicant the opportunity of licensure in a lesser classification. The department shall notify the applicant in writing of such offer and, if the applicant wishes to accept licensure in the lesser classification, the applicant must notify the department in writing of the applicants acceptance within thirty (30) days after receipt of the department's written offer. [16.43.2.10 NMAC - Rp, 16 NMAC 43.2.8.3, 07/30/06]

16.43.2.11 CLASS I HOISTING OPERATOR:**A. Scope of work:**

(1) A class I hoisting operator shall have an endorsement on the applicant's license, based on experience, authorizing him to operate any size or weight of one or more of the following types of cranes: conventional, hydraulic, and/or tower.

(2) A class I hoisting operator may perform the work of a class II or class III hoisting operator without being licensed in either of those classifications.

B. Requirements for licensure:

(1) *Application:* applicant must submit to the department a completed application form.

(2) *Fee:* applicant must submit to the department applicable fee(s) as set out in 16.43.2.24 NMAC of these rules.

(3) *Age requirement:* the applicant must be at least twenty-one (21) years of age.

(4) Experience requirement:

(a) The applicant must have at

least three (3) years of experience within the past five (5) years in operating hoisting equipment. Applicant's experience must include at least five hundred (500) hours of seat time on a crane of the type for which he seeks the initial endorsement. For a conventional crane endorsement, the applicant's experience must have been with conventional cranes with a manufacturer's rating capacity equal to or greater than fifty (50) tons and a boom length of one hundred (100) feet. For a hydraulic crane endorsement, the applicant's experience must have been with hydraulic cranes with a manufacturer's rating capacity equal to or greater than one hundred (100) tons and a boom length of one hundred (100) feet. For a tower crane endorsement, the applicant's experience must have been with tower cranes of any size or type.

(b) If the applicant cannot document the required experience, he may demonstrate his operating competency by passing a practical examination as approved by the council.

(c) A class I hoisting operator who seeks an additional endorsement on his license shall keep a log book of his seat time operating the appropriate type of hoisting equipment and must accumulate fifty (50) hours of seat time under the direct supervision of either a class I hoisting operator with the proper endorsement or the manufacturer's representative.

(d) A class II or class III hoisting operator who seeks an initial endorsement as a class I hoisting operator shall keep a log book of his seat time operating the appropriate type of hoisting equipment and must accumulate five hundred (500) hours of seat time under the direct supervision of a class I hoisting operator with the proper endorsement.

(5) Verification of work experience.

(a) Applicant shall furnish written statement(s) from present or former supervisor(s) or employer(s) verifying that the applicant has had, in total, at least three (3) years of experience within the past five (5) years, totaling at least 500 hours, in operating the type(s) of hoisting equipment specified above. The statement(s) shall contain at least the following information relating to the applicant: dates of employment, type(s) and tonnage(s) of hoisting equipment operated, and number of hours of operation of each type of equipment.

(b) If applicant is a class I hoisting operator seeking an additional endorsement on his license, applicant shall present to the department his log book showing at least fifty (50) hours of seat time operating the type of equipment for which he seeks an additional endorsement. The seat time must have been under the direct supervision of

either a class I hoisting operator with the proper endorsement or the manufacturer's representative.

(c) A class II or class III hoisting operator who seeks an initial endorsement as a class I hoisting operator shall present to the department his log book showing at least five hundred (500) hours of seat time operating the type of equipment for which he seeks the endorsement. The seat time must have been under the direct supervision of a class I hoisting operator with the proper endorsement.

(6) Proof of physical condition:

(a) The applicant shall furnish to the department a current United States department of transportation (DOT) certificate of physical examination signed by a licensed physician.

(b) The applicant shall furnish to the department a report from a United States department of transportation (DOT) certified drug testing laboratory showing that the applicant has passed a DOT drug screen within the past twelve (12) months.

(7) *Proof of compliance with Parental Responsibility Act:* If applicant's name appears on a certified list from the New Mexico HSD of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from HSD.

(8) *General examination:* Except for an applicant licensed under the provisions of Subsection A of 16.43.2.9 NMAC of these rules (in-house training), the applicant must demonstrate professional competency by passing a written general examination selected and approved by the council.

(9) *Law and safety examination:* The applicant must demonstrate knowledge of the act and these rules by passing a written law and safety examination selected and approved by the council. Such examination will include questions regarding the law, load charts, and hand signals.

[16.43.2.11 NMAC - Rp, 16 NMAC 43.2.8.4, 07/30/06]

16.43.2.12 CLASS II HOISTING OPERATOR:**A. Scope of work:**

(1) A class II hoisting operator may operate a hydraulic crane of up to one hundred (100) tons lifting capacity with a maximum boom length of one hundred fifty (150) feet, regardless of mounting or means of mobility.

(2) A class II hoisting operator may perform the duties of a class I hoisting operator without being licensed in that classification *only* while working under the direct supervision of a class I hoisting operator with the proper endorsement.

(3) A class II hoisting operator

may perform the work of a class III hoisting operator without being licensed in that classification.

B. Requirements for licensure:

(1) *Application:* Applicant must submit to the department a completed application form.

(2) *Fee:* Applicant must submit to the department applicable fee(s) as set out in 16.43.2.24 NMAC of these rules.

(3) *Age requirement:* The applicant must be at least eighteen (18) years of age.

(4) *Experience requirements:*

(a) The applicant must have at least two (2) years of experience within the past five (5) years in operating hydraulic cranes over ten (10) tons and up to one hundred (100) tons lifting capacity with a maximum boom length of one hundred fifty (150) feet, regardless of mounting or means of mobility. Applicant's experience must include at least five hundred (500) hours of seat time on a crane of the specified type.

(b) If the applicant cannot document the required experience, the applicant may demonstrate his operating competency by passing a practical examination as approved by the council.

(c) A class III hoisting operator who seeks licensing as a class II hoisting operator must have at least five hundred (500) hours of seat time operating the appropriate type of equipment or six thousand (6,000) documented hours of experience under the direct supervision of a class II or class I hoisting operator.

(5) *Verification of work experience:*

(a) Applicant shall submit written statement(s) from present or former supervisor(s) or employer(s) verifying that the applicant has had, in total, at least two (2) years of experience within the past five (5) years, totaling at least five hundred (500) hours, in operating the type of hoisting equipment specified above. The statement(s) shall contain at least the following information relating to the applicant: dates of employment, type(s) and tonnage(s) of hoisting equipment operated, and number of hours of operation of each type of equipment.

(b) If applicant is a class III hoisting operator seeking to qualify as a class II hoisting operator, applicant must present his log book verifying at least five hundred (500) hours of seat time operating the appropriate type of equipment or documentation of six thousand (6,000) hours of experience under the direct supervision of a class II or class I hoisting operator.

(6) *Proof of physical condition:*

(a) The applicant shall furnish to the department a current United States department of transportation (DOT) certifi-

cate of physical examination signed by a licensed physician.

(b) The applicant shall furnish to the department a report from a United States department of transportation (DOT) certified drug testing laboratory showing that the applicant has passed a DOT drug screen within the past twelve (12) months.

(7) *Proof of compliance with Parental Responsibility Act:* If applicant's name appears on a certified list from the New Mexico HSD of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from HSD.

(8) *General examination:* Except for an applicant licensed under the provisions of 16.43.2.9 NMAC of these rules (in-house training), the applicant must demonstrate professional competency by passing a written general examination selected and approved by the department.

(9) *Law and safety examination:* The applicant must demonstrate knowledge of the act and these rules by passing a written law and safety examination selected and approved by the council. Such examination will include questions regarding the law, load charts, and hand signals. [16.43.2.12 NMAC - Rp, 16 NMAC 43.2.8.5, 07/30/06]

16.43.2.13 CLASS III HOISTING OPERATOR:

A. Scope of work:

(1) A class III hoisting operator may work as an apprentice, trainee, or crane oiler or driver, under the direct supervision of a class I or class II hoisting operator.

(2) A class III hoisting operator may perform the duties of a class I or class II hoisting operator without being licensed in that classification *only* while working under the direct supervision of a class I or class II hoisting operator.

B. Requirements for licensure:

(1) *Application:* Applicant must submit to the department a completed application form.

(2) *Fee:* Applicant must submit to the department applicable fees as set out in 16.43.2.24 NMAC of these rules.

(3) *Age requirement:* The applicant must be at least eighteen (18) years of age.

(4) *Experience requirements:* No prior experience in the hoisting industry is necessary.

(5) *Proof of physical condition:*

(a) The applicant shall furnish to the department a current United States department of transportation (DOT) certificate of physical examination signed by a licensed physician.

(b) The applicant shall furnish to

the department a report from a United States department of transportation (DOT) certified drug testing laboratory showing that the applicant has passed a DOT drug screen within the past twelve (12) months.

(6) *Proof of compliance with Parental Responsibility Act:* If applicant's name appears on a certified list from the New Mexico's HSD of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from HSD.

(7) *Law and safety examination:* The applicant must demonstrate knowledge of the act and these rules by passing a written law and safety examination selected and approved by the council. Such examination will include questions regarding the law and hand signals.

[16.43.2.13 NMAC - Rp, 16 NMAC 43.2.8.6, 07/30/06]

16.43.2.14 LOG BOOK:

A. Class I hoisting operator: A log book must be kept by any class I hoisting operator who seeks an additional endorsement on his class I license.

B. Class II hoisting operator: A log book must be kept by any class II hoisting operator who seeks to become a class I hoisting operator.

C. Class III hoisting operator: A log book must be kept by any class III hoisting operator who seeks to become a class I or class II hoisting operator.

D. Contents of log book: The log book shall contain, at a minimum: name of person maintaining the log, type and tonnage of equipment operated, boom length, date and specific hours of operation, total hours of operation, printed name of direct supervisor, and signature of supervisor for that time period.

[16.43.2.14 NMAC - Rp, 16 NMAC 43.2.8.7, 07/30/06]

16.43.2.15 EXAMINATIONS:

A. Testing services: the department may contract for testing services or may enter into agreement(s) with any private or state agency to provide testing services for licensure of hoisting operators.

B. General examination:

(1) A written general examination selected and approved by the council shall be scheduled at least monthly; the dates and locations of the examinations shall be determined by the examining vendor approved by the council.

(2) The written general examination shall test the applicant's knowledge of hoisting equipment operation, its care and maintenance, inspection and set-up, and related safety practices.

(3) The written general examination shall be required to be taken and passed

by all applicants for hoisting operator licenses in any classification, unless not required under 16.43.2.9 NMAC of these rules.

(4) A passing grade shall be 75 percent or better.

C. Law and safety examination:

(1) A written law and safety examination selected and approved by the council shall be scheduled at least monthly; the dates and locations of the examinations shall be determined by the examining vendor approved by the council.

(2) The law and safety examination shall test the applicant's knowledge of the act and these rules. Such examination for class I and class II applicants will include questions regarding load charts and hand signals. Such examination for class III applicants will include questions regarding hand signals.

(3) All applicants for hoisting operator licenses in any classification, including applicants applying under 16.43.2.9 NMAC of these rules, are required to take and pass the law and safety examination.

(4) A passing grade shall be 75 percent or better.

D. Practical examination:

(1) The practical exam shall be approved by the council.

(2) If an applicant passes the general examination and the law and safety examination but does not meet the experience requirements set out in 16.43.2.11 or 16.43.2.12 NMAC of these rules and the applicant elects not to accept a lesser classification as provided for in Subsection C of 16.43.2.10 NMAC of these rules, then the applicant shall be required to pass a practical examination.

(3) The practical examination shall demonstrate the applicant's competence in the safe operation of hoisting equipment. The applicant shall satisfactorily demonstrate the ability to perform common tasks required of a hoisting operator, including but not limited to inspection and maintenance procedures, reading and understanding load capacity charts, safely raising and lowering a load, raising and lowering the boom, swinging the crane with a suspended load, braking, and understanding hand signals.

(4) A practical examination shall be scheduled by the examining vendor approved by the council.

E. Re-scheduling of examination:

(1) An applicant who is unable to appear for a scheduled law and safety examination must notify the examining vendor approved by the council in a timely manner, in writing, that the applicant will be unable to take the examination at the scheduled

time; the applicant then may apply to take the examination at another scheduled time by submitting a written request to the examining vendor approved by the council to re-schedule the examination. No additional examination fee will be required.

(2) An applicant who does not appear for a scheduled law and safety examination for any reason and does not notify the department or the examining vendor as approved by the council in a timely manner, in writing, shall forfeit the examination fee already paid. If the applicant wishes to schedule an examination at another time, the applicant must submit a written request to the examining vendor approved by the council and must pay a new examination fee.

F. Re-examination:

(1) An applicant who fails an initial or subsequent required examination must wait at least seven (7) days before the applicant shall be permitted to take a second or subsequent general examination or law and safety examination.

(2) Every retest or new test, whether general, law and safety or practical, shall require payment of a new examination fee.

G. Cheating on examination: Any applicant cheating on an examination, as determined by the tester or examining vendor approved by the council, will not be accorded a passing grade on that examination; further, the applicant will not be permitted to reapply to take that same examination or to apply for any other examination required for a hoisting operator's license in any classification for a period of one (1) year from the date of such infraction.

[16.43.2.15 NMAC - Rp, 16 NMAC 43.2.8.9, 07/30/06]

16.43.2.16 CHANGES IN STATUS:

A. Change of address: A licensee shall report to the department in writing any change of permanent address within thirty (30) days of such change.

B. Change of name: If a licensee legally changes his or her name and wishes his or her license to reflect that name change, the licensee shall submit the following to the department: proof of the name change, and a fee in accordance with Subsection J of 16.43.2.24 NMAC of these rules.

C. Change of classification: An applicant for a hoisting operator's license in a classification different from the classification currently held or for an additional endorsement shall apply on forms supplied by the department.

[16.43.2.16 NMAC - Rp, 16 NMAC 43.2.8.10, 07/30/06]

16.43.2.17 LICENSE RENEWAL:

A. Timely renewal: It is the duty and responsibility of the licensee to timely renew his or her license on forms prescribed by the department.

B. Filing date: The filing date of the renewal application shall be deemed to be the date the envelope is post-marked or, if hand-delivered, the date it is received and date-stamped in the department's office.

C. Refresher course:

(1) Every two (2) years from the date of initial licensure, the licensee must submit proof of having successfully completed an industry-recognized and council-approved refresher course for hoisting operators. The course must have been completed no more than twelve (12) months prior to the filing date of the licensee's renewal application.

(2) The council shall publish a list of all approved refresher courses and shall update that list whenever any party is added to or deleted from the list.

D. Documentation required for renewal of license:

(1) **Renewal form:** Applicant must submit to the department a completed renewal form.

(2) **Fee:** Applicant must submit to the department application fee(s) as set out in Subsection D of 16.43.2.24 NMAC of these rules.

(3) **Proof of physical condition:** The required proof shall be the same as for an initial license.

(4) **Proof of compliance with Parental Responsibility Act:** The required proof shall be the same as for the original license.

(5) **Refresher course:** Applicant must submit to the department proof of successful completion of a refresher course as set forth in Subsection C of 16.43.2.17 NMAC of these rules.

E. Late fee:

(1) Unless the application for renewal is filed on or before the expiration date of the license, a late fee shall be payable by the applicant to the department.

(2) If a license is renewed within six (6) months after its expiration, a late fee in accordance with Subsection E of 16.43.2.24 NMAC of these rules shall be paid. The applicant for renewal must comply with all renewal requirements and must pay the late fee in addition to the renewal fee.

F. Reinstatement fee:

(1) A license that is not renewed on or before its expiration date or during the six (6) month period set out in Paragraph (2) of Subsection E of 16.43.2.24 NMAC of these rules may be reinstated if a renewal

application is filed no more than one (1) year after the expiration date of the license.

(2) In order to reinstate a license, the applicant must comply with all renewal requirements, submit a renewal application and pay renewal and late fees as well as a reinstatement fee as set out in Subsection E of 16.43.2.24 NMAC of these rules.

G. Non-renewal of license:

(1) If a license is not renewed before or during the reinstatement period and a person wishes to work as a hoisting operator, he must apply for a new license and meet all initial licensing requirements.

(2) If a licensee works as a hoisting operator at any time during which his license is expired, he shall be deemed to be working as an unlicensed hoisting operator and shall be subject to penalties set out in Subsection C of Section 60-15-8 NMSA 1978 of the act.

[16.43.2.17 NMAC - Rp, 16 NMAC 43.2.8.11, 07/30/06]

16.43.2.18 PARENTAL RESPONSIBILITY ACT COMPLIANCE:

A. Compliance required: Any applicant or licensee must be in compliance with the Parental Responsibility Act (40-5A-1 et seq. NMSA 1978).

B. Disciplinary action: If an applicant or licensee is not in compliance with a judgment and order for child support, the department:

(1) shall deny an application for a license;

(2) shall deny the renewal of a license; and

(3) has grounds for suspension or revocation of license.

C. Initial action: Upon receipt from the New Mexico human services department of a certified list of persons not in compliance with a judgment and order for child support, the council shall match the certified list against licensees and applicants. Upon determination that an applicant or licensee appears on the certified list, the council shall:

(1) recommend that the department take the appropriate action under Subsection B of 16.43.2.18 NMAC of these rules; or

(2) for current licensees only, informally notify the licensee that his name is on the certified list and require that the licensee provide the council with a statement of compliance from the human services department by the earlier of the license renewal date or a specified date not to exceed sixty (60) days; if the licensee fails to provide such statement, the council shall recommend to the department that a formal proceeding be commenced in accordance with Subsection B of 16.43.2.18 NMAC of these rules.

D. Evidence and proof: In any hearing under this section, a statement of non-compliance is conclusive evidence that requires the council to recommend the appropriate action under Subsection B of 16.43.2.18 NMAC of these rules, unless the applicant or licensee provides the council with a subsequent statement of compliance, which shall preclude the department from taking any action under this section.

E. Order: When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for child support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance.

F. Procedures: Proceedings under this section shall be governed by the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978). [16.43.2.18 NMAC - Rp, 16 NMAC 43.2.8.12, 07/30/06]

16.43.2.19 PENALTIES:

A. Negligent or reckless operation of hoisting equipment: In accordance with Section 60-15-11 NMSA 1978 of the act, the department may reprimand or fine a licensee, or place an operator on probation without any penalties, or suspend or revoke the license of a licensee, pursuant to the findings of a hearing of the council, for negligent or reckless operation of hoisting equipment.

B. Working after expiration of license: In accordance with Subsection C of Section 60-15-8 NMSA 1978 of the act, a person who is employed as a hoisting operator in any classification after his license has expired is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) or by imprisonment for not more than six (6) months or both.

C. Unlicensed hoisting operator: In accordance with Subsection A of Section 60-15-13 NMSA 1978 of the act, a person who operates a crane without a hoisting operator's license is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) or by imprisonment for not more than six (6) months or both. When a crane operator is found in violation of the rules and regulations adopted by the department or for any violation of the provisions of the act or its rules, the inspector or investigator designated by the department shall cite the violation; issue a written order for the cessation of the operation of the crane; contact the operator's supervisor and inform him/her of the cessation of the operation of the crane; and inform the operator that

he/she has 10 (ten) days from the date of receipt of the violation in which to contact the department for a stipulated agreement and that failure to contact the department within those ten (10) days will automatically constitute a criminal charge against the operator with no further notice to the operator. After the operator has contacted the department, a stipulated agreement form shall then be mailed to the operator at this address provided to the department and shall afford the operator the following two options:

(1) to acknowledge his/her guilt of the offense charged, remit an administrative fee to the department, agree to obtain proper licensure prior to operating a crane and show evidence that the operator is moving toward compliance with the act within 30 days of the receipt of the violation; the administrative fee for a stipulated agreement shall be \$100 for the first 30 days; \$200 after the first 30 days and before 60 days; \$300 after 60 days and before 90 days, and after 90 days, an automatic criminal charge will be filed against the operator with no further notice to the operator, or

(2) pay an administrative fee of \$300 and agree to not operate hoisting equipment in New Mexico as defined in the act and understand that he/she will not be eligible to apply for such license for one (1) year from the date of the stipulated agreement, and that a second violation of the act will constitute an automatic criminal charge against him/her with no further notice; if the fee is not received by the department after 60 days from receipt of the citation, an automatic criminal charge will be filed against the operator with no further notice to the operator.

D. Employer's liability: In accordance with Subsection B of Section 60-15-13 NMSA 1978 of the act, an employer or his representative who knowingly, willingly or intentionally allows a person not licensed under the act to operate hoisting equipment is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment for not more than six (6) months or both.

E. Violation of provisions of act:

(1) In accordance with Subsection E of Section 60-15-13 NMSA 1978 of the act, the department may assess an administrative penalty not to exceed one thousand dollars (\$1,000) for any violation of the act, in addition to or instead of revocation or suspension of license.

(2) In accordance with Subsection C of Section 60-15-13 NMSA 1978 of the act, any licensed hoisting operator who violates any provision of the act may be assessed a civil penalty not to exceed one thousand dollars (\$1,000) for each day on

which a violation occurs.

F. Violation of rules: In accordance with Section 60-15-11 NMSA 1978 of the act, the department may reprimand or fine a licensee, or suspend or revoke the license of a licensee, for violation of these rules.

G. Payment of expenses, attorney fees and court costs: In accordance with Subsection D of Section 60-15-13 NMSA 1978 of the act, the department may bring an action in a court of competent jurisdiction to enjoin any person from violating any provisions of the act. If the court finds that a violation has occurred, the violator shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of the act plus reasonable attorneys' fees and costs associated with the court action.

H. Non-compliance with Parental Responsibility Act: The department and/or council may take the actions set out in 16.43.2.18 NMAC of these rules or any action authorized by 40-5A-1 et seq. NMSA 1978.

[16.43.2.19 NMAC - Rp, 16 NMAC 43.2.8.13, 07/30/06]

16.43.2.20 REPORT OF INCIDENT:

A. Any in-house exemption holder or licensee involved in any incident that involves personal injury requiring a hospital stay of 72 (seventy-two) hours or more or damage to property of \$1000 or more, shall submit a complete report to the department in forms prescribed by the council within ninety-six (96) hours of the incident.

B. Failure to report any incident shall result in a penalty pursuant to Section 16.43.2.20 of this act.

C. Upon receipt of a report regarding an incident that may have involved a crane operator or hoisting operator, the department, council or /its designee shall gather information on the incident and/or may assign an inspector or investigator to visit the site of the incident, investigate the cause(s) of the incident, and submit a written report to the council summarizing his/her findings.

D. Review by council: The council shall review the incident investigation findings and make its recommendation to the department.

[16.43.2.20 NMAC - Rp, 16 NMAC 43.2.8.14, 07/30/06]

16.43.2.21 INSPECTION/INVESTIGATION:

A. Inspection services: The department may contract for inspection services or may enter into agreement(s) with any private or state agency to provide inspection services regarding licenses of

hoisting operators.

B. Investigation services: The department may contract for investigation services or may enter into agreement(s) with any private or state agency to provide investigation services in order to determine the cause(s) of any accident involving a hoisting operator and/or hoisting equipment, to cite unlicensed hoisting operators, to cite licensed hoisting operators operating beyond the scope of their license and/or endorsement, and to cite employers in accordance with Subsection B of Section 60-15-13 NMSA 1978 of the act.

[16.43.2.21 NMAC - Rp, 16 NMAC 43.2.8.15, 07/30/06]

16.43.2.22 COMPLAINTS AND APPEALS:

A. Uniform Licensing Act: Complaints and appeals shall be processed in accordance with the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978).

B. Complaint: The department or council, on its own motion or upon receipt of a sworn complaint in writing of a licensee's negligent or reckless operation of hoisting equipment, violation of these rules, or any violation of the provisions of the act, shall notify the licensee, in writing, of the charges made and shall afford the licensee an opportunity to be heard in person.

C. Hearing by council: The department or council shall fix a time and place of hearing and shall cause a notice of hearing to be served on the licensee by personal delivery or by certified mail to the licensee's last address of record with the department. At the time and place fixed in the notice, the council shall proceed to the hearing of the charges; both the licensee and the complainant shall be accorded ample opportunity to present such statements, testimony, evidence and/or argument as may be pertinent to the charges or to any defense thereto. After such hearing, the council shall submit its findings and recommendation to the department.

D. Action by department: Following the hearing set out in Subsection C of 16.43.2.22 NMAC of these rules, the superintendent may reprimand or fine a licensee, and/or suspend or revoke the license of a licensee, if the licensee is determined to be guilty of the negligent or reckless operation of hoisting equipment, violation of these rules, or violation of any provisions of the act.

E. Revocation or suspension of License:

(1) Prior to revocation, suspension or denial of a license for a violation of any provisions of the act, the licensee shall be provided a hearing in accordance with the ULA.

(a) A disciplinary action against a

licensee is initiated by filing a complaint with the council.

(b) The licensee shall be notified of the complaint within thirty (30) days of filing. The licensee shall then have thirty (30) days to respond to the allegation(s) of the complaint or the licensee may notify the council in writing that the licensee has corrected the violation(s) alleged in the complaint.

(c) If the licensee does not respond to the allegation(s) of the complaint or corrects the alleged violation(s), the council may issue an NCA in accordance with the ULA.

(d) A request for hearing shall be provided in accordance with the ULA.

(2) After revocation of license, the former licensee shall not be eligible to apply for a hoisting operator's license in any classification for a period of one (1) year.

(3) Upon suspension or revocation of license, or as soon thereafter as practicable, the licensee shall surrender possession of his license to the department. The license shall be placed in the licensee's file.

(4) Prior to the issuance or re-issuance of a license to any person whose license was revoked or suspended, the person must furnish proof to the department of the successful completion of an industry-recognized and council-approved refresher course for hoisting operators.

F. Appeal from decision of superintendent: A decision of the superintendent may be appealed by filing a petition for review with the district court.

[16.43.2.22 NMAC - Rp, 16 NMAC 43.2.8.16, 07/30/06]

16.43.2.23 HOISTING OPERATORS LICENSURE EXAMINING COUNCIL:

A. Establishment of council: The hoisting operators licensure examining council is established in accordance with Section 60-15-14 NMSA 1978 of the act.

B. Membership of council: The council shall consist of no less than five (5) members appointed by the superintendent with consideration being given to geographic representation:

(1) one member shall be a class I hoisting operator; and

(2) one member shall be a contractor (as defined in Section 60-13-3 NMSA 1978) who employs one or more hoisting operators; and

(3) one member shall be a representative of organized labor; and

(4) the other members shall be public members who are not licensed hoisting operators.

C. Terms of service: Council members serve at the pleasure of

the superintendent.

D. Elections: At the first council meeting of each calendar year, the council shall elect, by majority vote of the members present, the following officers: chair, vice-chair, and secretary. No officer shall be elected more than twice in succession to the same office, nor serve for a period of more than three (3) years. If an officer leaves the council for any reason, a successor officer shall be elected, by majority vote of the members present at the next meeting of the council, to serve the remainder of the term.

E. Quorum: A quorum of the council shall be more than one-half (1/2) of the total membership of the council. A quorum is necessary to conduct official business. A vacancy in the membership of the council shall not impair the right of a quorum to exercise all the rights and perform all the duties of the council.

F. Telephone conferences: If it is difficult or impossible for a member of the council to attend a meeting in person, the member may participate through a telephone conference. Each council member participating by telephone conference must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the council who speaks during the meeting.

G. Compensation: Council members may be reimbursed as provided in the Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978) and shall receive no other compensation, perquisite or allowance.

H. Meetings: The council shall meet quarterly. A meeting shall be convened at the request of the department, the call of the chair, or upon written request (addressed to the chair) of two (2) council members. Meetings shall be held in compliance with the requirements of the Open Meetings Act (10-15-1 to 10-15-4 NMSA 1978).

I. Public records: The council and department shall comply with the Inspection of Public Records Act (14-2-1 to 14-2-12 NMSA 1978). The council's administrator shall be the custodian of the council's records.

J. Duties: Duties of the council shall include:

(1) reviewing, evaluating, and approving the applications, qualifications and examinations of applicants for licensure, and recommending to the superintendent whether licensure should be granted;

(2) holding hearings in accordance with the requirements of the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978) and reporting its findings and recommendations to the superintendent;

(3) examining proposed in-house training courses and refresher courses to determine whether they meet the requirements of the act and these rules, and publishing and updating lists of approved courses and refresher courses;

(4) reviewing incident investigation findings and making recommendations to the department;

(5) proceeding according to these rules adopted by the department;

(6) making recommendations to the department concerning any aspect of licensing under the act or these rules.

[16.43.2.23 NMAC - Rp, 16 NMAC 43.2.8.17, 07/30/06]

16.43.2.24 FEES:

A. Fee Payments:

(1) All checks to the department from applicants and licensees shall be made payable to hoisting program.

(2) All payments shall be due at the department's office.

(3) All fees and payments shall be non-refundable in whole or in part.

B. Application fee: The application fee for a license in any classification or for a change in classification shall be \$50.00. The application fee must be submitted with the completed application.

C. Initial license fee:

(1) An applicant accepted for licensure as a class I hoisting operator shall pay an initial license fee of \$75.00 for two years.

(2) An applicant accepted for licensure as a class II hoisting operator shall pay an initial license fee of \$75.00 for two years.

(3) An applicant accepted for licensure as a class III hoisting operator shall pay an initial license fee of \$25 for two years.

D. Renewal license fee:

(1) The fee for renewal of a license as a class I hoisting operator is \$75.00. The renewed license shall be valid for two (2) years from the expiration date of the previous license.

(2) The fee for renewal of a license as a class II hoisting operator is \$75.00. The renewed license shall be valid for two (2) years from the expiration date of the previous license.

(3) The fee for renewal of a license as a class III hoisting operator is \$25.00. The renewed license shall be valid for two (2) years from the expiration date of the previous license.

E. Late fee:

(1) Unless a renewal application is filed on or before the expiration date of the license, a late fee shall be payable.

(2) If a license is renewed within six (6) months after its expiration, a late fee of \$5.00 shall be paid for each month or

portion thereof that the renewal application is past-due.

F. Reinstatement fee: A license that is not renewed on or before its expiration date or during the six (6) month period set out in 16.43.2.25.E of these rules may be reinstated if a renewal application is submitted no more than one (1) year after the expiration date of the license. The reinstatement fee is \$100.00 and is in addition to renewal and late fees.

G. General examination fee: The fee for an initial or subsequent general examination for any classification shall be set by the department in consultation with the examining vendor approved by the council, but in no event shall exceed \$50.00.

H. Law and safety examination fee: The fee for an initial or subsequent law and safety examination shall be set by the department in consultation with the testing agency, but in no event shall exceed \$25.00.

I. Practical examination fee: The fee for initial and subsequent practical examinations shall be set between the applicant and the examining vendor approved by the council.

J. Duplicate license fee: The fee for the replacement of a lost, destroyed or mutilated license, or for the issuance of a replacement license because of a name change or for any other reason, shall be \$10.00.

K. In-House Training fee:

(1) Any person or organization offering in-house training and wishing approval of its course shall submit a \$300 application fee.

(2) Upon approval, a person or organization shall submit a certification fee of \$400.

(3) Any person or organization wishing to renew its certification shall submit a \$300 renewal fee.

(4) Any employer offering in-house training and wishing approval of its course shall submit a \$150 application fee.

(5) Upon approval, the employer shall submit a certification fee of \$300.

(6) Any employer wishing to renew its in-house training certification shall submit a \$200 renewal fee.

L. Returned check fee:

The fee for any check that fails to clear the bank or is returned unpaid by the bank for any reason shall be \$35.00. A returned check shall cause any license issued or to be issued or any examination scheduled or to be scheduled to be immediately suspended until proper payment in full is received by the department, including a "returned check" fee as set out in this subsection.

M. Administrative fees:

(1) The fee for photocopies of documents shall be sixty five (65) cents per

page.

(2) The fee for certified copies of documents shall be seventy five (75) cents per page.

N. Miscellaneous fees:

The fee for any service or item not mentioned above shall be set at a reasonable amount by the department.

[16.43.2.24 NMAC - Rp, 16 NMAC 43.2.8.18, 07/30/06]

HISTORY OF 16.43.2 NMAC:

Pre NMAC History: None.

History of Repealed Material:

16 NMAC 43.2, "Hoisting Operators Safety" (filed January 2, 1997) is hereby repealed 07/30/06.

NMAC History: 16 NMAC 43.2.2, Hoisting Operators Safety (filed 1-02-1997), effective 1-15-1997.

16 NMAC 43.2, Hoisting Operators Safety (filed 1-02-1997) was renumbered, reformatted, amended, and replaced by 16.43.2 NMAC, Hoisting Operators Safety; Hoisting Operators Code, effective 07/30/06.

End of Adopted Rules Section

This page intentionally left blank.

Other Material Related to Administrative Law

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

Public Meeting Notice

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the 2006 Acequia and Community Ditch Fund. The meeting will be held on Tuesday, August 1, 2006, at 1:30 p.m. in Santa Fe, New Mexico, Room 303, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (505) 646-1091, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (505) 646-1091. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 3	July 17
Issue Number 14	July 18	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.