

**NEW
MEXICO
REGISTER**

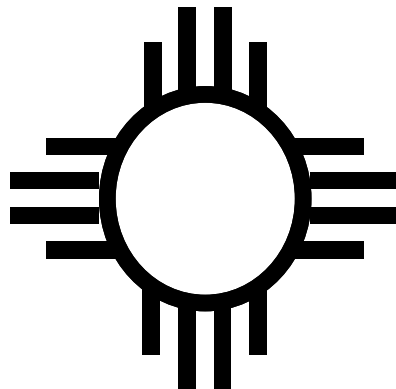


**Volume XVII
Issue Number 14
July 31, 2006**

New Mexico Register

Volume XVII, Issue Number 14

July 31, 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

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New Mexico Register

Volume XVII, Number 14

July 31, 2006

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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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 ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 3, 2006 at 9:00 a.m. at the State Capitol Building, Room 311, Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 06-04 (R) to adopt a new regulation, 20.2.85 NMAC (Mercury Emission Standards and Compliance Schedules for Electric Generating Units), and revise 20.2.84 NMAC (Acid Rain Permits).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

NMED proposes to adopt 20.2.85 NMAC to create a methodology for allocation of mercury emission allowances and specify compliance schedules for electric generating units. In doing so, NMED proposes to satisfy obligations pursuant to the federal Environmental Protection Agency's Clean Air Mercury Rule. NMED proposes to revise 20.2.84 NMAC to incorporate definitions added to federal regulations as part of the Clean Air Mercury Rule.

The proposed new and revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico. A full text of NMED's proposed new and revised regulations are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Andy Berger at (505) 955-8034 or andy.berger@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 72-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on September 22, 2006, and should reference the docket number, EIB 06-04 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by September 19, 2006 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed new and revised regulations at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NEW MEXICO HUMAN SERVICES DEPARTMENT NOTICE OF PUBLIC HEARING LOW INCOME HOME ENERGY ASSIS- TANCE PROGRAM PROPOSED REGULATIONS FOR FFY 2007

ANNUAL ADJUSTMENTS TO LOW INCOME HOME ENERGY ASSISTANCE INCOME ELIGIBILITY GUIDELINES, CHANGE IN INCOME POINT GROUPS, MANUAL REVISIONS FOR CLARITY

A public hearing to receive testimony on these proposed regulations will be held at 10:00 A.M. on Wednesday September 6, 2006. The hearing will be held at the HSD law library, 2009 S. Pacheco St., Santa Fe, NM. Parking accessible to persons with physical impairments will be available.

Each year the Human Services Department (HSD) is required to make adjustments to the LIHEAP poverty guidelines to remain consistent with the federal poverty guidelines (FPG) per The Low-Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended).

HSD proposes to administer the LIHEAP program for federal fiscal year (FFY) 2007 using the most recently issued FPG.

HSD utilizes a point system to determine the value of LIHEAP household benefits. Each point is worth a specific dollar amount, which is determined based on available funding. The point system assigns certain points for energy cost/burden, income/household size, and certain vulnerable household circumstances, including age and disability. HSD proposes to change the point groupings from four to two FPG ranges. Households will be assigned three (3) points when income is 0% - 100% FPG and two (2) points when income is 101% - 150% FPG. An eligible household cannot receive less than 2 points or more than 12 points under this proposal.

HSD also proposes to replace in the LIHEAP rule, where appropriate, the bureau name "Food and Nutrition Services Bureau (FNSB)" with the "Income Support Division" and/or its abbreviation, "ISD".

Changes in terminology will be made in the following 8.150 NMAC policy sections: 100, 101, 102, 410, 430, 500, 520, 522, 524,

526, 600, 620, and 624. Most of the language will clarify and not modify the policy with the following exceptions: Additions to 8.150.410 NMAC are needed to correspond with federal regulations regarding enumeration. Additions to 8.150.600 NMAC address the use of credit balances when a benefit has been issued to a utility vendor. Changes to 8.150.620 NMAC will align the age range for children to match the federal reporting category for vulnerable populations to include children age 5 and under.

Each year, HSD submits a LIHEAP plan to the U. S. Department of Health and Human Services (DHHS). The plan describes how the Low Income Home Energy Assistance Program will be administered in New Mexico. Policy in 8.150 NMAC describes how the plan is administered. The changes that are proposed in policy will be incorporated into the FFY 2007 LIHEAP plan.

Individuals wishing to request a copy of the current and proposed rule changes and/or the current and proposed LIHEAP state plan should contact the Income Support Division, Work and Family Support Bureau, P. O. Box 2348, Santa Fe, New Mexico 87504-2348, or call 1 (800) 648-7167. The current regulations can also be viewed on the internet at http://www.state.nm.us/hsd/HSDISDPolicyManuals/LIHEAPManual/LIHEAP_PolicyManual.html.

The Department proposes to implement these regulations effective October 1, 2006.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program, or service, please contact the NM Human Services Department toll free at 1-(800) 432-6217 or through the Relay New Mexico system, toll free at 1-(800) 659-8331. The Department requests at least ten days advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Interested parties may also address comments by electronic mail to: loretta.williams@state.nm.us. These comments must be received no later than 5:00 p.m., on the date of the hearing.

Written and recorded comments will be given the same consideration as oral com-

ments made at the public hearing.

Publication of these proposed regulations approved by:

PAMELA S. HYDE, J.D., SECRETARY
HUMAN SERVICES DEPARTMENT
P. O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 1:30 p.m., on August 31, 2006, at the New Mexico State Library at 1205 Camino Carlos Rey, Santa Fe, New Mexico. The subject of the hearing will be PACE (Program of All-Inclusive Care for the Elderly) Program.

In New Mexico Human Services Register Vol. 29, No. 17, dated June 13, 2006, a public hearing was scheduled for August 15, 2006 to amend the PACE program regulations. This public hearing has been rescheduled to August 31, 2006. The Centers for Medicare and Medicaid Services (CMS) approved the full provider status of the New Mexico PACE program effective July 1, 2004. Prior to July 1, 2004, the New Mexico PACE program status was that of a Pre-PACE Pilot program, a Medicaid capitated-only program. Approval of full provider status signifies that the PACE program is now a Medicaid and Medicare capitated program.

Medicare Part D Prescription Drug Coverage was implemented with an effective date of January 1, 2006. Under Medicare Part D, Medicare is responsible for pharmacy costs for PACE participants who are Medicare beneficiaries. Effective January 1, 2006, New Mexico Medicaid is no longer responsible for PACE participants' pharmacy costs. Total Community Care, LLC (TCC), the sole PACE provider in New Mexico, is a Medicare Part D Provider.

The promulgation of these PACE regulations formalizes the changes made effective by CMS approval of full provider status for PACE, as well as the changes made effective by the January 1, 2006 implementation of Medicare Part D.

Interested persons may submit written comments no later than 5:00 p.m., August 31, 2006, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box

2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.html. or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF THE 2006 ANNUAL TITLE INSURANCE HEARING

NOTICE OF HEARING TO CONSIDER THE PROMULGATION OF PREMIUM RATES AND PROCEDURAL ORDER

**DOCKET NO.
06-00277-IN**

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

1. A public hearing shall be held commencing on **Friday, November 17, 2006 at 9:30 a.m.**, and continuing thereafter as nec-

essary in the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of considering title insurance rates. The proceeding shall be a formal administrative hearing within the meaning of NMSA 1978, Section 59A-4-17. Certain provisions of the Administrative Procedures Act, specifically, NMSA 1978, Sections 12-8-10 through 12-8-13, and Section 12-8-15, shall apply to the proceeding.

2. Pursuant to NMSA 1978, Section 59A-3-6 (C), title insurance rates shall not be excessive, inadequate or unfairly discriminatory, and shall contain an allowance permitting a profit which is not unreasonable in relation to the riskiness of the business of title insurance.

3. Any person intending to file a rate proposal or otherwise participate as a party to this proceeding shall file a motion for leave to intervene on or before **Friday, August 11, 2006**. Objections to motions for leave to intervene shall be filed on or before **Friday, August 18, 2006**.

4. Techniques of pre-hearing discovery permitted in civil actions in New Mexico, such as interrogatories, depositions, and requests for production of documents, may be employed by Staff or any party commencing on or after **Friday, September 8, 2006**. The time in which to respond to interrogatories and requests for production of documents shall be shortened to 10 calendar days after service.

5. Staff of the Insurance Division Title Insurance Bureau ("Staff") and all other persons who have been granted leave to intervene ("parties") who wish to submit independent written rate proposal(s) and actuarial reports(s) relating to the rate proposals(s) shall file such proposal(s) and report(s) in this docket on or before **Friday, October 20, 2006**.

6. Staff and all parties shall file the following items in this docket on or before **Friday, October 20, 2006**:

a) Notice of Intent to Call Expert Witnesses, which shall include the name, address, and business association of each expert witness;

b) Witness List, which shall include addresses and telephone numbers for each witness named; and

c) Pre-filed Direct Testimony and copies of related exhibits for each lay witness and for each expert witness.

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

8. Staff and all parties shall file the following items in this docket on or before **Friday, November 3, 2006**:

a) Pre-filed Rebuttal Testimony and copies of related exhibits; and

b) Objections to Pre-filed Direct Testimony and exhibits.

9. Staff and all parties shall file Objections to Pre-filed Rebuttal Testimony and exhibits in this docket on or before **Wednesday, November 8, 2006**:

10. Staff and all parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing, stipulations regarding undisputed material facts and admissibility of all uncontested documents, and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding the promulgation of premium rates and any stipulations reached by the parties on or before **Wednesday, November 8, 2006**.

11. No discovery requests or notices of taking deposition shall be served after **Wednesday, November 8, 2006**.

12. A pre-hearing conference shall be held on **Wednesday, November 8, 2006, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions and other outstanding matters related to the hearing, and to set the agenda for the hearing.

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

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

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

16. Any individual with a disability who is in need of a reader, amplifier, quali-

fied sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Bettie Cordova at (505) 827-4526 no later than **Monday, November 13, 2006**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Bettie Cordova if a summary or other type of accessible form is needed.

DONE AND ORDERED this 11 day of June 2006

Thomas R. Rushton
Acting Superintendent of Insurance

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE
NEW MEXICO
SUPERINTENDENT
OF INSURANCE**

**IN THE MATTER
OF THE 2006
ANNUAL TITLE
INSURANCE
HEARING**

**DOCKET
NO. 06-00277-IN**

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

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

1. A public hearing shall be held on **Thursday, November 16, 2006, at 9:30 a.m.** and continuing thereafter as necessary in the Public Regulation Commission Hearing Room, Second Floor, Marian Hall, 224 East Palace Avenue, Santa Fe, New

Mexico. The hearing shall be held for the purpose of adopting and/or amending regulations and forms, for determining the Insurance Fraud Fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14 (1999), and for addressing other matters related to the business of title insurance. The proceeding shall be informal within the meaning of NMSA 1978, Section 59A-4-18.

2. Staff of the Insurance Division ("Staff") and all other persons wishing to submit proposals relating to adopting and/or amending regulations and forms, determining the Insurance Fraud Fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14 (1999), and other matters related to the business of title insurance shall file the following items in this docket on or before **Friday, October 13, 2006:**

a) written proposal(s) and an electronic word document version of each proposal. The electronic versions may be filed in the docket on a diskette or e-mailed to Charles.Denton@state.nm.us.; and

b) written comments and exhibits in support of their proposal(s). All written comments shall state and discuss the particular reasons for the proposal and where necessary or appropriate to effectuate the proposal, shall include specific language to implement the proposal.

3. All interested persons may testify at the hearing.

4. Written comments on proposals filed in this docket shall be filed on or before **Friday, October 27, 2006.**

5. All written comments suggesting changes to proposals shall state and discuss the particular reasons for the suggested changes and, where necessary or appropriate to effectuate the changes being suggested, shall include specific language for incorporation into the proposal.

6. The parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding regulation of title insurance other than promulgation of premium rates on or before **Wednesday, November 8, 2006.**

7. A pre-hearing conference shall be held on **Wednesday, November 8, 2006, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions related to the hearing, and to set the agenda for the hearing.

8. Proposals and comments will be

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

9. All submissions shall be deemed filed as of the date and time stamped by the docketing office.

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

11. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Bettie Cordova at (505) 827-4526 no later than November 13, 2006. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Bettie Cordova if a summary or other type of accessible form is needed.

12. Interested persons should contact the Docketing Office or Staff for confirmation of the hearing date, time and place since hearings are rescheduled on occasion.

DONE AND ORDERED this 11th day of June 2006.

Thomas R. Rushton
Acting Superintendent of Insurance

**NEW MEXICO PUBLIC REGULATION
COMMISSION
TRANSPORTATION DIVISION**

**BEFORE THE NEW MEXICO PUBLIC
REGULATION COMMISSION)
)
IN THE MATTER OF)
THE ADOPTION OF)
PROPOSED AMENDMENTS TO)
THE COMMISSION'S)
MOTOR TRANSPORTATION)
RULE 18.3.3 NMAC)
)
TRANSPORTATION)
DIVISION STAFF OF THE PUBLIC)
REGULATION COMMISSION,)**

Docket No. 06-00145-TR-M

Petitioner.

AMENDED NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission ("Commission") is continuing a rulemaking proceeding for the purpose of proposing an amendment to the Commission's Motor Transportation Rule on financial responsibility, 18.3.3 NMAC. The proposed amendment would be promulgated under authority granted to the Commission under NMSA 1978, Sections 8-8-4, 8-8-15, 65-2A-4 and 65-2A-18. The proposed amendment to 18.3.3 NMAC is attached to the original and the mailed copies of this Amended Notice of Proposed Rulemaking ("Amended NOPR") as Exhibit 1.

On April 20, 2006, Staff of the Transportation Division of the Commission ("Staff") filed a Motion to Initiate Rulemaking. Staff requested that the Commission commence a rulemaking proceeding to amend 18.3.3 NMAC to implement NMSA 1978, Section 65-2A-18, which requires the Commission to prescribe minimum requirements for financial responsibility for all "incidental carriers." The statute defines the term "incidental carrier" as, "a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports

passengers in conjunction with the primary service that it provides." NMSA 1978, Section 65-2A-3 S.

On May 2, 2006, the Commission issued its original Notice of Proposed Rulemaking ("NOPR") in this matter, in which it granted Staff's Motion to Initiate Rulemaking and found that the Commission should consider adopting a rule pertaining to minimum levels of financial responsibility for incidental carriers.

As proposed by Staff, the amended Rule would require each incidental carrier to maintain a combined single limit public liability policy amount of at least two hundred and fifty thousand dollars (\$250,000) per occurrence for bodily injury to, or death of, all persons injured or killed and property damage.

The original NOPR provided that any person wishing to comment on the proposed amendment could do so by submitting written comments no later than June 2, 2006 and any person wishing to respond to such comments could do so by submitting written response comments no later than June 5, 2006. The original NOPR also provided that public comment hearings would be held on May 24, 2006, May 30, 2006 and June 16, 2006.

The period to submit written comments regarding the proposed amendment is hereby re-opened. Any person wishing to comment on the proposed amendment may do so by submitting written comments no later than August 7, 2006, and any person wishing to respond to such comments may do so by submitting written response comments no later than August 11, 2006.

Comments suggesting changes to the rule amendment as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft rule shall be provided in legislative format.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Copies of the proposed amendments to Rule 18.3.3 NMAC can be obtained from, and comments on the proposed rule, and response comments, shall be sent to:

Bettie Cordova, Docketing Office
New Mexico Public Regulation Commission
Docketing Bureau
PERA Bldg. Room 406
1120 Paseo del Peralta 87501
PO Box 1269
Santa Fe, New Mexico 87504-1269
Telephone: (505) 827-4526

The Commission will review all timely submitted written comments and will hold an additional public hearing to take oral comment regarding the proposed rules. The additional public hearing shall be held on September 6, 2006 at 10:00 a.m. at the offices of the Public Regulation Commission, PERA Building, 4th Floor Hearing Room, 1120 Paseo de Peralta, Santa Fe, NM 87501.

Persons interested in attending the additional public hearing should contact the Commission at the telephone number listed above to confirm the date, time and place of any public hearing, since hearings are occasionally rescheduled. Pursuant to NMSA 1978, Section 8-8-15(B), this notice, including Exhibit 1, shall be mailed at least thirty days prior to the September 6, 2006 hearing date to all persons who have made a written request for advance notice. Also, pursuant to NMSA 1978, Section 8-8-15 B, this notice shall be published (without Exhibit 1) in at least two newspapers of general circulation in the state and in the New Mexico Register.

Copies of any Final Order adopting a rule in this matter will be sent, along with copies of the particular rule, to commentors in the case and individuals requesting such copies.

Any person with a disability requiring special assistance in order to participate in a hearing should contact Bettie Cordova at (505) 827-4526 at least 48 hours prior to the commencement of any listed hearing.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 18th day of July, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID KING, COMMISSIONER

LYNDA M. LOVEJOY,
COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
MANUFACTURED HOUSING
DIVISION

State Of New Mexico
Regulation and Licensing Department
Manufactured Housing Division

LEGAL NOTICE
NOTIFICATION OF PUBLIC HEARING
RULEMAKING
Manufactured Housing Committee

The Manufactured Housing Committee has scheduled a Public Hearing for September 5, 2006. The purpose of this hearing will be to receive public comment on a proposed change to the Manufactured Housing Rules and Regulations, Sections 12.14.2.7 and 14.12.2.57 New Mexico Administrative Code (NMAC). The specific proposed changes to these sections are outlined below.

The Hearing will be held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505, in the Conference Room of the Construction Industries Division, from 1:30 p.m. to 3:30 p.m.

The specific proposed rule change reads as follows:

14.12.2.7 DEFINITIONS: All words and terms defined in the Manufactured Housing Act have the same meaning in these regulations.

A. "Act" means the Manufactured Housing Act. Chapter 60, Article 14, Section 4, NMSA, 1978 is incorporated herein and made a part of these regulations.

B. "Alternative Permanent Foundation Systems" are defined as commercially packaged systems designed by a New Mexico licensed engineer for the purpose of classifying installations as permanent.

[B] C. "Anchoring" is defined as those systems approved by a DAPIA.

Where no DAPIA approval exists a licensed professional engineer may design a anchoring system pursuant to the manufacturer's specifications.

(1) "Tie-Down" is any device designed for the purpose of securing a manufactured home to the ground.

(2) "Ground Anchor" is a listed screw auger.

[C] D. "Commercial Unit" means any structure designed and equipped for human occupancy for industrial, professional or commercial purposes.

[D] E. "Customer, Consumer or Homeowner". These words are used interchangeably throughout these regulations, they are intended to be synonymous, and they mean the purchaser, homeowner or owner of a manufactured home, including an occupant of a manufactured home subsequent to installation.

14.12.2.57 Permanent Foundation System:

I. ~~[Retro-fit]~~ Alternative permanent foundation systems:

(1) Other types of permanent foundation systems designed for the purpose of classifying an ~~[existing]~~ installation as a permanent foundation shall be submitted on an individual basis. These require submittal of installation instructions, ~~[and]~~ calculations and ~~[or]~~ design layouts. All submissions shall be stamped by a New Mexico licensed engineer, and each application shall be region specific. Commercially packaged systems must submit their complete installation and design package to be kept on file with the division. It shall be the responsibility of the system proprietor to submit any updates or alterations of the system.

(2) ~~[These systems are limited for use on homes at least two years out from original purchase date.]~~ Any installation of an alternative ~~[retro-fit]~~ foundation system on a new home or any home within two years of original purchase must be installed based upon the manufacturer's ~~[DAPIA]~~ written approval ~~[and must]~~ or be included in the manufacturer's installation manual.

~~[(3) All systems whether commercially packaged or individually engineered must contain a certification that the system meets or exceeds the minimum requirements of a permanent foundation as defined in Subsection W of 14.12.2.7 NMAC and 14.12.2.57 NMAC and the permanent foundation guide for manufactured homes (HUD-007487), and must bear the engineers stamp. All calculations and or testing results in support of certification must be submitted to the division upon request.]~~

[14.12.2.57 NMAC - Rp, 14 NMAC 12.2.50, 9-14-00; A, 12-1-03; A, 7-1-05]

In addition to receiving public comment at the September 5, 2006 public hearing, the Manufactured Housing Committee will receive written comments between the time period of July 30, 2006 and September 5, 2006 at 3:30 p.m. Written comments should be mailed, or delivered to, the Manufactured Housing Division of the Regulation and Licensing Department, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico, 87505. Written comments may also be faxed to (505) 476-4702.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than September 1, 2006.

Wayne Dotson, Acting Director
Manufactured Housing Division
2550 Cerrillos Road
P.O. Box 25101
Santa Fe, New Mexico 87505
(505) 476-4775

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PRO- POSED RULES

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

Cigarette Tax Act

3.9.1.7 NMAC Section 7-12-2 NMSA 1978

(Definitions: Small Cigars Defined)

3.9.1.9 NMAC Section 7-12-4 NMSA 1978

(Documentation to Substantiate the Issuance of a Tribal License)

3.9.1.10 NMAC Section 7-12-4 NMSA 1978

(Documentation to Substantiate Sales of Cigarettes to Exempt Entities)

3.9.1.11 NMAC Section 7-12-5 NMSA 1978

(Qualifications for a Stamp to Be Considered Affixed)

3.9.1.12 NMAC Section 7-12-7 NMSA 1978

(Cigarette Stamp Quantities)

3.9.1.13 NMAC Section 7-12-9.1 NMSA 1978

(Cigarette Distributor and Manufacturer License - Licensing Fee)

3.9.1.14 NMAC Section 7-12-9.4 NMSA 1978

(Cigarettes Not Purchased From a Licensed Distributor)

3.9.1.15 NMAC Section 7-12-13.1 NMSA 1978

(Civil Penalties)

3.9.1.16 NMAC Section 7-12-18 NMSA 1978

(Reporting Under Section 7-12-8 NMSA 1978)

3.9.1.17 NMAC Section 7-12-18 NMSA 1978

(Documentation of Cigarettes Shipped Out of New Mexico)

3.9.1.18 NMAC Section 7-12-2 NMSA 1978

(False and Fraudulent Manufacturing Labels)

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

Cigarette Tax Act

3.9.2.8 NMAC Section 7-12-12 NMSA 1978

(Transporting Unstamped Cigarettes Into New Mexico)

The proposals were placed on file in the Office of the Secretary on June 26, 2006. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about September 15, 2006.

A public hearing will be held on the proposals on Thursday, August 31, 2006, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before August 31, 2006.

3.9.1.7 **DEFINITIONS:**

SMALL CIGARS DEFINED: For purposes of the Cigarette Tax Act, small cigars are subject to the same requirements that apply to cigarettes. A "small cigar" is a roll of tobacco or any substitute for tobacco wrapped in paper or in anything that is not one hundred percent tobacco and weighs less than three pounds per thousand.

[3.9.1.7 NMAC - N, XXX]

3.9.1.9 **DOCUMENTATION TO SUBSTANTIATE THE ISSUANCE OF A TRIBAL LICENSE:**

Any documentation showing that a governing body or, if

the governing body has delegated the licensing function to an administrative agency, the appropriate administrative agency, has authorized the enrolled tribal member to use or sell cigarettes on that tribe's reservation or pueblo grant is sufficient to claim the exemption under Section 7-12-4 NMSA 1978.

[3.9.1.9 NMAC - N, XXX]

3.9.1.10 DOCUMENTATION TO SUBSTANTIATE SALES OF CIGARETTES TO EXEMPT ENTITIES:

A. A distributor shall sell packages of cigarettes bearing a tax-exempt stamp only to:

(1) the United States or any agency or instrumentality thereof;

(2) the State of New Mexico or any political subdivision thereof;

(3) the governing body of an Indian tribe, as defined in Subsection A of 3.2.4.7 NMAC, for use or sale on that tribe's reservation or pueblo grant; or

(4) a person who is recognized by the governing body of an Indian tribe, as defined in Subsection A of 3.2.4.7 NMAC, to be an enrolled member of that Indian tribe and who is authorized by that Indian tribe to sell cigarettes on the reservation or pueblo grant of that Indian tribe for use or sale on that tribe's reservation or pueblo grant.

B. The distributor must maintain records demonstrating that the sale is to an entity or person described in Subsection A above.

C. For sales to a purchaser described in Paragraphs (1) and (2) of Subsection A above, the distributor shall retain documentation related to the transaction showing the governmental entity's name, such as purchase orders, copies of warrants issued in payment and contracts related to the cigarettes sold.

D. For sales to a purchaser described in Paragraph (3) of Subsection A above, the distributor shall obtain a statement, signed by the purchaser of the cigarettes that the purchaser is the governing body of an Indian tribe, as defined by Subsection A of 3.2.4.7 NMAC, and that the cigarettes are being purchased for use or sale on that tribe's reservation or pueblo grant. The statement must be attested to by a tribal official.

E. For sales to a purchaser described in Paragraph (4) of Subsection A above, the distributor shall obtain a statement signed by the purchaser of the cigarettes that the purchaser is an enrolled member of an Indian tribe, as defined by Subsection A of 3.2.4.7 NMAC. The statement of membership must either specify the tribal member's official tribal or BIA census number, or in the case in which the Indian

tribe does not maintain an official census system, the signature of an official of the purchaser's Indian tribe confirming the statement of membership. The statement of membership may also be provided to the purchaser by the Indian tribe on behalf of one or more of its members, if attested to by a tribal official. Upon request, the secretary may approve additional methods of documenting membership. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an enrolled member of an Indian tribe.

E. For sales to a purchaser described in Paragraph (4) of Subsection A above, the distributor shall also obtain documentation that the purchaser is authorized by, or under, the authority of the governing body of the purchaser's Indian tribe to sell or use cigarettes on the reservation or pueblo grant of that Indian tribe. This documentation must be attested to by a tribal official. The purchaser of the cigarettes shall also affirm in writing to the distributor that the cigarettes are being purchased for use or sale on that tribe's reservation or pueblo grant.

[3.9.1.10 NMAC - N, XXX]

3.9.1.11 QUALIFICATIONS FOR A STAMP TO BE CONSIDERED AFFIXED:

In order for a stamp to be considered affixed, a package must have at least 60% of the stamp visible, including the entire serial number. Packages of cigarettes that do not meet these requirements shall be considered contraband cigarettes and may be subject to the penalties imposed under Section 7-12-13.1 NMSA 1978.

[3.9.1.11 NMAC - N, XXX]

3.9.1.12 CIGARETTE STAMP QUANTITIES:

The minimum order for cigarette stamps is 1,500, and the minimum order for tax-exempt stamps is 15,000.

[3.9.1.12 NMAC - N, XXX]

3.9.1.13 CIGARETTE DISTRIBUTOR AND MANUFACTURER LICENSE - LICENSING FEE:

Any person that applies for a cigarette distributor's license or a manufacturer's license shall pay a licensing fee of one hundred dollars (\$100.00). The licensing fee will be imposed for every license, including annual renewals.

[3.9.1.13 NMAC - N, XXX]

3.9.1.14 CIGARETTES NOT PURCHASED FROM A LICENSED DISTRIBUTOR:

If a cigarette retailer has in its possession cigarettes determined by the department to have been purchased from a source other than a licensed distributor, the retailer may be subject to penalties

under Section 7-12.13.1 NMSA 1978. [3.9.1.14 NMAC - N, XXX]

3.9.1.15 CIVIL PENALTIES:

The department will impose the penalties authorized by Section 7-12-13.1 NMSA 1978 in accordance with the following schedule.

A. The penalty for a first offense shall be imposed as follows:

(1) one hundred dollars (\$100) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;

(2) two hundred fifty dollars (\$250) for a violation involving a quantity of between two cartons and not more than twenty-five cartons of contraband cigarettes;

(3) five hundred dollars (\$500) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or

(4) one thousand dollars (\$1,000) for a violation involving a quantity of three hundred or more cartons of contraband cigarettes.

B. The penalty for a second offense shall be imposed as follows:

(1) one thousand five hundred dollars (\$1,500) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;

(2) one thousand seven hundred fifty dollars (\$1,750) for a violation involving a quantity of between two cartons and not more than twenty-five cartons of contraband cigarettes;

(3) two thousand dollars (\$2,000) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or

(4) two thousand five hundred dollars (\$2,500) for a violation involving a quantity three hundred or more cartons of contraband cigarettes.

C. The penalty for a third offense shall be imposed as follows:

(1) five thousand dollars (\$5,000) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;

(2) seven thousand five hundred dollars (\$7,500) for a violation involving a quantity of more than two cartons and not more than twenty-five cartons of contraband cigarettes;

(3) ten thousand dollars (\$10,000) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or

(4) fifty thousand dollars (\$50,000) for a violation involving a quantity of three hundred or more cartons of contraband cigarettes.

D. The level of the penalty imposed for a second or third offense is determined only on the quantity of cigarettes involved with that offense, and not on cigarettes involved in a prior offense. [3.9.1.15 NMAC - N, XXX]

3.9.1.16 **REPORTING UNDER SECTION 7-12-18 NMSA 1978:**

Persons required to submit reports concerning their cigarette transactions, under Section 7-12-18 NMSA 1978, shall do so on a monthly basis. These reports, RPD 41279 Cigarette Distributor's Monthly Report and RPD-41280 Cigarette Manufacturer's Monthly Report shall be submitted to the department on or before the 25th day of the month after the reporting period. [3.9.1.16 NMAC - N, XXX]

3.9.1.17 **DOCUMENTATION OF CIGARETTES SHIPPED OUT OF NEW MEXICO:**

A cigarette distributor who ships cigarettes outside New Mexico must report the quantity of cigarette packages shipped out of state for each report period using the Schedule C form as an attachment to the form RPD-41279 Cigarette Distributor's Monthly Report. In addition to the reporting function the distributor must maintain the following documentation for three years with respect to each shipment:

- A. bill of lading;
B. delivery receipts;
C. the name and address of

persons to whom cigarettes are shipped out of state. [3.9.1.17 NMAC - N, XXX]

3.9.1.18 **FALSE AND FRAUDULENT MANUFACTURING LABELS:**

Product labels on packages of cigarettes, including small cigars, that are in compliance with federal requirements are not false and fraudulent manufacturing labels for purposes of the Cigarette Tax Act. [3.9.1.18 NMAC - N, XXX]

3.9.2.8 **[TRANSPORTING UNSTAMPED CIGARETTES FOR INDIAN NATION, TRIBE OR PUEBLO**

A. Any person transporting or seeking to transport in this state unstamped cigarettes on behalf and under authority of the governing body of an Indian nation, tribe or pueblo, or any enrolled member licensed by the governing body, shall have in his or her possession for each transportation a duly executed affidavit in the following form:

AFFIDAVIT

To: New Mexico Taxation and Revenue Department
Special Tax Programs

P.O. Box 630
Santa Fe NM 87504-0630

I, _____,
(Name)

_____, of the _____
(Title) (Nation, Tribe or Pueblo)

hereby certify that unstamped cigarettes purchased under invoice number _____, dated _____, are being transported to and on behalf of the business enterprise known as _____ which is located on the _____ (Pueblo Grant or Reservation)

and is owned and operated by the governing body of the Nation, Tribe or Pueblo [or by _____, an enrolled member of the Nation, Tribe or Pueblo licensed by the governing body to sell cigarettes on the Pueblo Grant or Reservation]. I further certify that the cigarettes being transported are solely for use or sale on the Pueblo Grant or Reservation.

I swear under the penalty of perjury that the foregoing is true and correct.
_____ Tribal Representative

Date: _____

B. For each sale the person transporting or seeking to transport the unstamped cigarettes shall deliver a copy of the affidavit to the person selling the unstamped cigarettes.

C. Any person selling unstamped cigarettes to an Indian nation, tribe or pueblo, or to an enrolled tribal member licensed by the governing body to sell cigarettes, shall require such an affidavit for each sale and shall retain a copy in its records for three years from the end of the year in which the sale took place.

D. Section 3.9.2.8 NMAC is applicable to transportation of unstamped cigarettes on or after May 20, 1992.]

TRANSPORTING UNSTAMPED CIGARETTES INTO NEW MEXICO: A person filing a notice with the department, pursuant to Subsection A of Section 7-12-12 NMSA 1978, shall include in the notice the following information:

- A. name and address of the person receiving the unstamped cigarettes in New Mexico;
B. the quantity of unstamped cigarettes being shipped into the state to that person;
C. the brands of the cigarettes being shipped into the state to that person;
and
D. the date of shipment.

[5/20/92, 9/14/96; 3.9.2.8 NMAC - Rn & A, 3 NMAC 9.2.8, 12/14/00; A, XXX]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 13 REGIONAL JUVENILE SERVICES GRANT FUND

8.14.13.1 ISSUING AGENCY:
New Mexico Children, Youth and Families Department.
[8.14.13.1 NMAC - N, 08/01/2006]

8.14.13.2 SCOPE: General public, all units of local and tribal government, all nonprofit organizations that may be seeking to provide certain temporary nonsecure alternatives to detention programs or services.
[8.14.13.2 NMAC - N, 08/01/2006]

8.14.13.3 S T A T U T O R Y AUTHORITY: Regional Juvenile Services Act, Sections 33-12-1 to 33-12-7, NMSA 1978 (1998), as amended, and the Children, Youth and Families Department Act, Section 9-2A-7(D) NMSA 1978 (2005), as amended.
[8.14.13.3 NMAC - N, 08/01/2006]

8.14.13.4 D U R A T I O N : Permanent.
[8.14.13.4 NMAC - N, 08/01/2006]

8.14.13.5 EFFECTIVE DATE: August 1, 2006, unless a later date is cited at the end of a section.
[8.14.13.5 NMAC - N, 08/01/2006]

8.14.13.6 OBJECTIVE: The objective of Chapter 14, Part 13 is to establish the manner in which money appropriated by the New Mexico state legislature to the regional juvenile services grant fund, and other money accruing to the fund as a result of gift or deposit, shall be awarded pursuant to the Regional Juvenile Services Act, Sections 33-12-1 to 33-12-7 NMSA 1978 (1998).
[8.14.13.6 NMAC - N, 08/01/2006]

8.14.13.7 DEFINITIONS:

A. "Department" shall refer to the children, youth and families department.

B. "Eligible applicant" shall refer to units of local or tribal government and nonprofit organizations.

C. "Grant fund" shall refer to the regional juvenile services grant fund, established pursuant to the Regional Juvenile Services Act, Sections 33-12-1 to

33-12-7 NMSA 1978 (1998), as amended.

D. "JJAC" shall refer to the juvenile justice advisory committee, formed and functioning pursuant to Sections 9-2A1-14 through 9-2A-16 NMSA 1978 (2005), as amended.

E. "Procurement Code" shall refer to the Procurement Code, Sections 13-1-21 to 13-1-199 NMSA 1978 (2006), as amended.
[8.14.13.7 NMAC - N, 08/01/2006]

8.14.13.8 ALLOWABLE USES OF GRANT FUND MONEY: The allowable uses for grant fund money are those set forth in the Regional Juvenile Services Act, Sections 33-12-1 to 33-12-7 NMSA 1978 (1998), as amended.

A. Grant fund money may be used to provide temporary, nonsecure alternatives to detention for juveniles who have been referred to the department's juvenile probation and parole offices. Such nonsecure alternative programs shall satisfy the following criteria:

(1) juveniles who receive services are referred to the program by the department's juvenile probation and parole office;

(2) the program's primary purpose is to provide an alternative to placement in a secure juvenile detention facility;

(3) one or more units of local government agree to provide the required local matching funds;

(4) the children's court division of the district court that has jurisdiction over the juvenile placed in the nonsecure program has approved the use of the program for such purposes; and

(5) the amount of the grant application does not exceed sixty percent of the total annual cost for the nonsecure alternative program.

B. Grant fund money may be used for the planning, assessment and design of a regional system of juvenile services, including secure detention and nonsecure alternatives, that serves multiple contiguous counties, municipalities, Indian tribes or pueblos. Such planning, assessment and design activities shall satisfy the following criteria:

(1) the project in question will serve multiple contiguous counties, municipalities, Indian tribes or pueblos;

(2) the activities are consistent with an overall statewide plan that contemplates no more than eight regions within the state; and

(3) the amount of the grant application does not exceed seventy-five percent of the total cost for planning, assessing and designing the regional system of juvenile services.

C. Grant fund money may be used to develop multipurpose regional facilities that serve multiple contiguous counties, municipalities, Indian tribes or pueblos. Such development shall satisfy the following criteria:

(1) the developer certifies that it is willing and able to operate a multipurpose regional facility in conformance with standards for detention facilities set forth in the Children's Code;

(2) the multipurpose regional facility shall serve only juveniles;

(3) the developer shall make formal arrangements for provision of adequate space for nonsecure services within the multipurpose regional facility, including emergency shelter and emergency treatment services;

(4) the region, composed of multiple contiguous counties, municipalities, Indian tribes or pueblos, that will use the multipurpose regional facility has been identified and established pursuant to a joint powers agreement entered into by units of local or tribal government within the region;

(5) all judicial districts within the region enter into a formal agreement pledging their intent to cooperate with the plan for a regional system of juvenile services; and

(6) the amount of the grant application does not exceed fifty percent of total project costs for the development of a multipurpose regional facility.
[8.14.13.8 NMAC - N, 08/01/2006]

8.14.13.9 IDENTIFYING PRIORITIES FOR AWARD OF GRANT FUND MONEY: Each fiscal year that money is available to be disbursed from the grant fund, the department in consultation with JJAC shall determine specific priorities for disbursement of the available money. The priorities must be selected from among the allowable uses specified for grant fund money.
[8.14.13.9 NMAC - N, 08/01/2006]

8.14.13.10 PROCUREMENT CODE TO PROVIDE MECHANISM FOR AWARD OF GRANT FUND MONEY:

A. All awards from the grant fund shall be made pursuant to the provisions of the Procurement Code and regulations promulgated thereunder.

B. After the department in consultation with JJAC establishes priorities for expenditure of grant fund money, the department shall issue requests for proposals to eligible applicants. The requests for proposals shall identify the amount of money available, the specific purpose(s) for

which the money is available, and allowable sources of matching funds. The requests for proposals shall identify such additional specific criteria as the department, in consultation with JJAC, finds necessary to effectuate the allowable uses selected for award of grant fund money, and that are consistent with the legislative mandate.

C. The issuance of requests for proposals, and the process of selecting among submitted proposals, shall be conducted and governed entirely by the applicable provisions of the Procurement Code and regulations promulgated thereunder.

D. The JJAC shall serve as the evaluation committee reviewing all submitted proposals. The JJAC shall make its recommendations to the department's secretary.

E. In the event the department in consultation with JJAC determines that an alternative procurement process is warranted in a specific circumstance, the award of grant fund money shall proceed in compliance with applicable provisions of the Procurement Code. Examples of alternative procurement processes include, but are not limited to: emergency procurements and sole source procurements.

F. The department's secretary shall have final approval of awards from the grant fund.

[8.14.13.10 NMAC - N, 08/01/2006]

8.14.13.11 GRANT FUND RECIPIENTS SHALL ENTER INTO FORMAL CONTRACTS WITH THE DEPARTMENT: Consistent with the provisions of the Procurement Code and regulations promulgated thereunder, the department shall negotiate with successful applicants to formalize the agreed-upon project as the subject of a contract between the grantee and the department. The contract shall identify with specificity the obligations of the grant fund recipient, including funds accountability and audit requirements.

[8.14.13.11 NMAC - N, 08/01/2006]

8.14.13.12 RIGHTS AND REMEDIES:

A. The rights and remedies of eligible applicants shall be those available to them under the Procurement Code and regulations promulgated thereunder.

B. The rights and remedies of grant fund recipients shall be those available to them pursuant to their contracts with the department.

[8.14.13.12 NMAC - N, 08/01/2006]

HISTORY OF 8.14.13 NMAC:

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

CYFD ICD Rule 1, Regional Juvenile Services Grant Fund Regulations, filed 12-27-94.

History of Repealed Material:

CYFD ICD Rule 1, Regional Juvenile Services Grant Fund Regulations, filed 12-27-94 - Repealed effective 6-30-2004.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

**TITLE 2 PUBLIC FINANCE
CHAPTER 1 PUBLIC FINANCE
GENERAL PROVISIONS
PART 3 STIMULATE ECONOMIC DEVELOPMENT**

2.1.3.1 ISSUING AGENCY: Economic Development Department.
[2.1.3.1 NMAC - N/E, 7-14-2006]

2.1.3.2 SCOPE: This part governs the how the EDD and the authority shall coordinate with each other to, among other things, identify and evaluate potential projects' suitability for financing assistance and formulate recommendations, except to the extent that this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.
[2.1.3.2 NMAC - N/E, 7-14-2006]

2.1.3.3 STATUTORY AUTHORITY: These regulations are adopted by the economic development department ("EDD") pursuant to the Statewide Economic Development Finance Act, Section 6-25-1 to 6-25-28 NMSA 1978, ("Act") the purpose of which are to stimulate economic development in New Mexico and to provide a method of implementing the economic development assistance provisions of Article IX, Section 14.D of the constitution of the state. Section 6-25-5 NMSA 1978 provides that the department and the New Mexico finance authority ("authority") will coordinate to, among other things, identify and evaluate potential projects' suitability for financing assistance and formulate recommendations. These regulations are adopted pursuant to Subsection C of Section 6-25-5 NMSA 1978 and Section 1.24.10 NMAC. The purpose of these regulations is to govern the activities of the department under the Statewide Economic Development Finance Act.
[2.1.3.3 NMAC - N/E, 7-14-2006]

2.1.3.4 DURATION: Permanent.
[2.1.3.4 NMAC - N/E, 7-14-2006]

2.1.3.5 EFFECTIVE DATE: July 14, 2006, unless a later date is cited at the end of a section.
[2.1.3.5 NMAC - N/E, 7-14-2006]

2.1.3.6 OBJECTIVE: The purposes of this part are to standardize the procedures whereby the EDD and the authority shall coordinate with each other to, among other things, identify and evaluate potential projects' suitability for financing assistance and formulate recommendations under the Statewide Economic Development Finance Act.
[2.1.3.6 NMAC - N/E, 7-14-2006]

2.1.3.7 DEFINITIONS: As used in this part: the terms used in these regulations shall have the same meaning as defined in the act unless other use defined in these regulations.
[2.1.3.7 NMAC - N/E, 7-14-2006]

2.1.3.8 IDENTIFICATION OF PROJECTS:

A. In accordance with Section 6-25-5 NMSA 1978, for the purpose of recommending projects to the authority for financing assistance, the department will coordinate with the authority to:

(1) survey potential eligible entities and projects and provide outreach services to eligible entities and local governments for the purpose of identifying and recommending projects to the authority;

(2) survey potential eligible entities and projects for suitability for financing assistance;

(3) formulate recommendations of projects that are suitable for financing assistance;

(4) obtain input and information relevant to the establishment and implementation of criteria for evaluating potential projects.

B. In identifying eligible entities and recommending projects, the department will consider and must determine that the entity is engaged in an enterprise that serves an economic goal and is suitable for financing assistance.

C. The department shall obtain information from the authority from time to time with respect to the availability of various types of financing assistance and the criteria used by the authority for evaluating potential projects.
[2.1.3.8 NMAC - N/E, 7-14-2006]

2.1.3.9 ADMINISTRATIVE COORDINATION WITH AUTHORITY: The department will coordinate with the authority from time to time for the authority's provision of staffing support and assistance in carrying out the department's responsibilities under the act.

[2.1.3.9 NMAC - N/E, 7-14-2006]

2.1.3.10 LIBERAL CONSTRUCTION: These guidelines shall be liberally construed to carry out their purpose.

[2.1.3.10 NMAC - N/E, 7-14-2006]

2.1.3.11 SEVERABILITY: If any part or application of these guidelines is held invalid, the remainder of these guidelines, or their application to other persons or situations, shall not be affected.

[2.1.3.11 NMAC - N/E, 7-14-2006]

HISTORY OF 2.1.3 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.4.2.3, 20.4.2.7, 20.4.2.200, 20.4.2.201, 20.4.2.202, 20.4.2.203, 20.4.2.204, 20.4.2.205, 20.4.2.206, 20.4.2.207, 20.4.2.208, 20.4.2.209, 20.4.2.210, 20.4.2.211, 20.4.2.300, 20.4.2.301, 20.4.2.302, and 20.4.2.402 NMAC, effective 8/18/06.

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 4 HAZARDOUS WASTE PART 2 HAZARDOUS WASTE PERMIT AND CORRECTIVE ACTION FEES

20.4.2.3 STATUTORY AUTHORITY: Sections 74-1-8, 74-4-4, 74-4-4.2 and 74-4-4.5 NMSA 1978 ~~[(Repl. Pamph. 1993)].~~

[12/31/98; 20.4.2.3 NMAC - Rn, 20 NMAC 4.2.I.103 & A, 8/18/06]

20.4.2.5 EFFECTIVE DATE: December 31, 1998, unless a later date is cited at the end of a section ~~[or paragraph].~~
[12/31/98; 20.4.2.5 NMAC - Rn, 20 NMAC 4.2.I.105 & A, 8/18/06]

20.4.2.7 DEFINITIONS: Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in ~~[20 NMAC 4.1]~~ 20.4.1 NMAC, Hazardous Waste Management regulations. As used in this part:

A. “accelerated corrective action completion report” or “accelerated corrective measures completion report” means a report on implementation of presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to

be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

B. “accelerated corrective action work plan” or “accelerated corrective measures work plan” means a work plan to implement presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

~~[C. “annual unit audit” Means a tabulation of each operating unit, unit undergoing closure or scheduled for closure, post closure care unit, and corrective action unit;]~~

C. “act” means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978;

~~[B] D.~~ “administrative authority” means the secretary of the New Mexico environment department, or the secretary’s designee, or, in the case of provisions for which the state is not authorized, the United States environmental protection agency (EPA);

E. “administratively complete” means a determination made by the secretary that an application contains all the general information required in 40 CFR 270.13, applicable specific information in sections 40 CFR 270.14 through 270.28 and is complete as defined by the regulations of 20.4.1.900 NMAC incorporating 40 CFR 270.10 (c) and (d);

F. “area of concern” or “AOC” means any area having a known or suspected release of hazardous waste or hazardous constituents that is not from a solid waste management unit and that the secretary has determined may pose a current or potential threat to human health or the environment, pursuant to 20.4.1.500 NMAC (incorporating 40 CFR 270.32 (b) (2)). An area of concern may include buildings, and structures at which releases of hazardous waste or constituents were not remediated, including one-time and accidental events;

G. “certification of completion” means a report documenting completion of corrective action required at a unit, submitted to the NMED to demonstrate that corrective action requirements for the unit, have been satisfied;

~~[D] H.~~ “closure certification document” means all documentation certified by a New Mexico registered professional engineer in a certification of closure that is submitted by [a] an owner or operator [New Mexico registered professional engineer in a certification of closure];

[E] I. “corrective action

[units]” means [solid waste management units that are included, or qualify to be included, in the HSWA module of the permit or compliance/corrective action order and have not been approved by the administrative authority for no further action (NFA) status] any activity related to site assessment, investigation, remediation, characterization or monitoring including reporting and document submittals at SWMUs or AOCs, including activities related to off-site migration;

J. “corrective action complete with controls” means that NMED has determined that no additional remedial activity is required at a unit, but the unit requires continued performance of operation and maintenance, or monitoring actions for engineering controls, or institutional controls;

K. “corrective action complete without controls” means that NMED has determined that no additional remedial activity is required at a unit;

L. “corrective measures evaluation” or “CME” or “corrective measures study report” or “CMS report” means a report or study that evaluates remedial alternatives for the purpose of remedy selection and includes specifications to implement a proposed remedy;

M. “corrective measures evaluation work plan” or “CME work plan” or “corrective measures study work plan” or “CMS work plan” means a plan to identify, develop and evaluate potential corrective measures (remedy) alternatives;

~~[F] N.~~ “corrective measures implementation work plan” or “CMI work plan” means plans and specifications to implement the approved remedy at a facility;

[G] O. “corrective measures implementation report” or “CMI report” means a report signifying completion of the remedy approved by NMED for termination of corrective action;

~~[H. “corrective measures study report” or “CMS report” means a report signifying completion of a corrective measure study;]~~

~~[I. “corrective measures study work plan” or “CMS work plan” means a plan to identify, develop and evaluate potential corrective measures (remedy) alternatives;]~~

~~[J. “document” means all plans, studies, reports and other documents listed in Tables 2.2 through 2.5 [now 20.4.2.204 through 20.4.2.207 NMAC];]~~

P. “enforceable document” means an order, a plan, or other document issued by EPA or the state under an authority that meets the requirements of 40 CFR 271.16 (e);

~~[K. “facility” means all~~

land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units;]

~~L.~~ “~~facility wide document~~” means a document that applies to an entire facility submitted with the approval of NMED, which may not consist of one of the documents listed in Tables 2.2 through 2.5 [now 20.4.2.204 through 20.4.2.207 NMAC];]

~~M.~~ “~~facility wide work plan~~” means a document describing a facility, typically setting forth standard operating procedures, plans and/or schedules and is synonymous with an installation work plan (IWP) or base wide plan (BWP);]

Q. “FCO” means federal facility compliance order;

~~N.~~ “~~HSWA module preparation~~” means preparation of a permit module addressing corrective action and other measures required by state law and regulations;]

R. “hazardous waste management activity” means the treatment, storage, or disposal of hazardous waste within a hazardous waste management unit at a facility subject to a hazardous waste permit or operated under interim status and subject to permit authorization, or any closure or post-closure care activity required at a hazardous waste management unit;

~~Q.~~ **S.** “HWMR” means the New Mexico Hazardous Waste Management regulations, Title 20, Chapter 4, Part 1 of the New Mexico administrative code;

~~P.~~ **T.** “interim [corrective] measure monitoring [(ICM) plan or] report” means a [plan or] report which describes results of the monitoring activities conducted during implementation of [proposed] measures to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, [to be] implemented prior to implementation of a final remedy;

U. “interim measures report” means a report that describes the results of interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;

V. “interim measures work plan” means a work plan to implement proposed interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;

W. “investigation report” or “RFI report” or “RCRA facility investigation report” or “phase report” means a report that summarizes the results of inves-

tigation of the nature, rate, movement and extent of contamination at a unit or facility;

X. “investigation work plan” or “RFI work plan” or “RCRA facility investigation work plan” means a work plan that describes proposed investigation activities to evaluate the nature, rate, movement and extent of contamination at a unit or facility;

Y. “monitoring plan” means a plan that describes proposed periodic monitoring activities for detection, compliance or corrective action ground water monitoring, monitoring of a remediation system, or other corrective measure monitoring;

Z. “notice of land transfer” means a notice that initiates NMED evaluation of the results of investigation activities conducted to evaluate the nature, rate, movement and extent of contamination and corrective measures at a property that is anticipated to be transferred to an owner other than the owner regulated by a permit or enforceable document;

~~Q.~~ **AA.** “NMED” means the New Mexico environment department;

BB. “operation and maintenance plan” means a plan that describes operation, maintenance and monitoring of a remediation system or other corrective measure or monitoring activity that requires continued monitoring or upkeep during implementation;

CC. “periodic monitoring report” means a report that summarizes periodic detection, compliance or corrective action ground water monitoring, monitoring of a remediation system, or other corrective measure monitoring;

~~R.~~ “permitted hazardous waste management activity” means:

(1) the treatment, storage or disposal of hazardous waste within a hazardous waste management unit at a facility subject to a hazardous waste permit or operated under interim status and subject to permit authorization; or

(2) any closure or post closure care activity required at a hazardous waste management unit; or

(3) any corrective action required at a facility;]

S. **DD.** “person” means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body; and shall include each department, agency and instrumentality of the United States;

~~F.~~ **EE.** “petition for NFA review” or “petition for corrective action complete review” means a petition to change the status of a unit from “subject to corrective action” to a different status (e.g.,

corrective action complete or no further action required) based on the results of [the RCRA facility investigation and/ corrective action activities or other relevant information [-for a class III permit modification, to terminate the RFI/CMS process for one or more specific units];

~~U.~~ “phase report” means a follow up document to a report previously submitted and approved by the administrative authority;]

FF. “pilot/aquifer test report” means a report summarizing the results of pilot or aquifer tests conducted to evaluate hydrologic or other conditions for the purpose of site investigation or remedy selection;

GG. “pilot/aquifer test work plan” means a work plan for conducting pilot or aquifer tests to evaluate hydrologic or other conditions for the purpose of site investigation or remedy selection;

~~V.~~ “quality assurance program plan/quality management plan (QAPP/QMP)” means a document that describes a quality control system in terms of the organization structure, functional responsibilities of management and staff, lines of authority, and roles of those planning, implementing, and assessing all activities conducted;]

~~W.~~ **HH.** “RCRA facility assessment” or “RFA” means the first stage in the corrective action process in which information is compiled on conditions at the site, including releases, potential releases, exposure pathways, solid waste management units, and areas of concern;

~~X.~~ “RCRA facility investigation report” or “RFI report” means a final report and summary of the report signifying conclusion of investigating the nature, rate, movement and extent of contamination at a site or facility;]

Y. “RCRA facility investigation work plan” or “RFI work plan” means a plan designed to investigate the nature, rate, movement and extent of contamination at a site or facility;]

Z. “RCRA implementation plan” or “RIP” means a plan which describes how a facility will come into compliance with applicable regulations;]

AA. **II.** “release assessment” or “SWMU assessment report” means an assessment of a solid waste management unit or area of concern performed after the RCRA facility assessment but before full [seale] site characterization to obtain information for use in focusing subsequent investigations or eliminating certain units or areas from further consideration;

JJ. “remedial action plan” or “RAP” means a special form of a RCRA permit as defined in 20.4.1.900 NMAC, incorporating 40 CFR 270.80;

KK. “remedy completion

report” means a report summarizing the results of completion of the implementation of corrective measures;

LL. “risk evaluation/risk assessment report” means a report summarizing the results of a risk evaluation or assessment for the purpose of evaluating the human health and ecological risks of exposure to contaminants and determining appropriate cleanup levels at a site;

MM. “secretary” means the secretary of the New Mexico environment department;

NN. “solid waste management unit” or “SWMU” means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste; such units include any area at a facility at which solid wastes have been routinely and systematically released;

OO. “submittal” means all applications, permit modification requests, plans, reports, studies, and other documents listed in tables 2 through 7 in 20.4.2.205 NMAC through 20.4.2.210 NMAC;

PP. “status report” means a report summarizing the progress of implementation of corrective actions or corrective measures;

QQ. “unit” means hazardous waste management unit as defined in 20.4.1.101 NMAC, incorporating 40 CFR 260.10, or solid waste management unit, or area of concern;

RR. “voluntary corrective action (VCA) plan or report” means a plan or report on an accelerated cleanup process that is typically applied to relatively small scale sites with obvious remedies, implemented at risk without prior approval of NMED and intended to be a final remedy;

SS. “voluntary corrective measure (VCM) plan or report” means a plan or report on an accelerated cleanup process that is typically applied to relatively small scale sites with obvious remedies with NMED approval and intended to be a final remedy;

TT. “well completion report” means a report summarizing the activities related to the drilling and installation of wells.

[12/31/98; 20.4.2.7 NMAC - Rn, 20 NMAC 4.2.I.107 & A, 8/18/06]

20.4.2.200 [BUSINESS AND] PERMIT APPLICATION, INTERIM STATUS, REMEDIAL ACTION PLAN, AND CORRECTIVE ACTION FEES:

[12/31/98; 20.4.2.200 NMAC - Rn, 20 NMAC 4.2.II.200 & A, 8/18/06]

20.4.2.201 TYPES OF FEES: Every [facility] owner or operator engaged

in [a permitted] hazardous waste management [activity] activities or [seeking a permit for the management of hazardous waste] engaged in corrective action shall pay to NMED fees in the amounts specified in [Subsections 201.1 through 201.12] Subsections A through [H] L of 20.4.2.201 NMAC. [A facility which] However, if an owner or operator has paid a fee for any type of permit application, or for the review of a [document] submittal, prior to the effective date of these regulations, the owner or operator shall not be required to pay the fee provided for by these regulations [; unless the requested approval is denied by HRMB and the document is resubmitted]. [A facility] An owner or operator [which] who has paid a fee provided for [by these regulations] in table 2 or table 4 for permit applications or permit modification requests shall be required to pay the applicable fee again if the application or document is resubmitted by the [facility] owner or operator after being [disapproved] denied under NMSA 1978, Section 74-4-4.2, and 20.4.1.901 NMAC by NMED. [; unless] The secretary may[;] in his discretion, based on good cause shown, determine that the fee on resubmission should be reduced or waived.

A. Annual [hazardous waste management business-f] Fees: Every [facility] owner or operator engaged in [a permitted] hazardous waste management [activity] activities or engaged in corrective action shall pay to NMED an annual [Hazardous Waste Management Business] fee [(AHWMBF)] in an amount equal to the sum of the annual unit fees set forth in table [2-] 1 of 20.4.2.204 NMAC for each unit as identified [by the Annual Unit Audit (AUA)]. Corrective action units for which fees are assessed are only those units which are identified by the AUA. The AHWMBF shall not be assessed for units, including but not limited to, Corrective Action Management Units (CAMU) and Temporary Units (TU), for which New Mexico has not been authorized by the Environmental Protection Agency (EPA) to administer, until such time as New Mexico receives such authorization in the facility permit, part A application, or enforceable document, or any combination thereof as applicable.

B. [Annual unit audit-] Each year HRMB shall conduct an AUA in cooperation with each facility required by these regulations to pay fees. The AUA shall be used to determine if the facility’s permit accurately and appropriately lists the facility’s operating, post closure care, and corrective action units. Except for the first year, the AUA shall be completed each year no later than July 1. In the first year the AUA shall be completed no later than three (3)

months after these regulations go into effect. A new facility that is permitted during the year shall have its AUA completed no later than thirty (30) days after the facility begins operations.] **Submittal review process:**

(1) For each submittal, the owner or operator shall pay the associated review fee as listed in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. NMED will conduct the review within the time specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. The secretary may grant an extension of time for good cause shown. NMED shall provide notice to the owner or operator of any requested time extension.

(2) NMED will invoice the owner or operator for the applicable review fee.

(a) Within 60 days of receipt of submittal, in the case of interim status fees, corrective action submittal fees, and other fees assessed under tables 3, 5, 6, and 7 of 20.4.2.206 NMAC and 20.4.2.208 NMAC through 20.4.2.210 NMAC.

(b) After an application is deemed administratively complete, in the case of application and permit modification fees under table 2 of 20.4.2.205 NMAC and table 4 of 20.4.2.207 NMAC. For class 2 permit modification requests the invoice shall be issued within 30 days of receipt and the procedures of 40 CFR 270.42, as incorporated by 20.4.1.900 NMAC, shall apply. Unless extended by the secretary, administrative completeness determination shall be made within 180 days of receipt of the submittal. If the application is incomplete, NMED shall provide the owner or operator with written notice that shall list those parts of the application that are missing and describe the specific information needed to process the permit application.

(3) The timeframe for NMED review begins after receipt of payment, except for class 2 permit modification requests, in which case the time frame for NMED’s review begins upon receipt of the request.

(4) NMED will provide the owner or operator written notice of approval, approval with modifications, disapproval, denial, or rejection of the submittal. If the submittal is disapproved, denied or rejected, NMED shall provide the owner or operator with written notice providing the reasons for such action.

(5) The review times specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC shall be tolled during all periods in which NMED is awaiting a response by the owner or operator to a notice under Paragraph (1) of Subsection B of 20.4.2.201 NMAC and during all time periods in which further action cannot be taken due to public comment and hearing

requirements, except for class 2 permit modification requests, in which case the time frame for NMED's review begins upon receipt of the request.

(6) If NMED fails to meet a notice date pursuant to 20.4.2.205 NMAC through 20.4.2.210 NMAC, including an administrative completeness notice date, the NMED shall, within 10 business days after the deadline, notify the secretary and the owner or operator that the deadline was not met. The written notice shall state the reasons that the deadline was not met and propose a new deadline by which the NMED will act. The owner or operator may submit a written response to the secretary regarding its proposed remedy within 10 business days of its receipt of the notification. The secretary, at his discretion, shall establish a new notice date and remedy within 30 days after the secretary receives notice that the deadline was not met.

(7) In the event of a conflict, between review time and notice dates in these regulations and in an enforceable document the time-periods and review process in the enforceable documents shall control.

C. Permit application, remedial action plan, and [HSWA module preparation] corrective action section fees: Every [facility] owner or operator seeking a permit for the treatment, storage or disposal of hazardous waste or for post closure care shall pay an application review and permit preparation fee set forth in table 2 [2] of 20.4.2.204[0] 5 NMAC. The fee for application [fee] review and permit preparation shall be in an amount equal to the sum of the [application] fees [set forth in Table 2.2] for each unit included in the permit application. If a [HSWA module] corrective action section is required, the [facility] owner or operator shall also pay the basic fee for [HSWA module] corrective action preparation set forth in table 2 [2] of 20.4.2.205 NMAC plus the additional unit fee [HSWA module preparation set forth in Table 2.2] for each corrective action unit in excess of one which is addressed by the [HSWA module] corrective action section.

(1) NMED shall perform [an initial] the review of the application [to determine if all the required parts are contained in the application. If any parts are missing the application shall be returned and the facility shall be advised of the missing parts. If the application contains all required parts the facility shall be issued a notice that the application has been deemed administratively complete and shall be invoiced the applicable application fee and the HSWA module preparation fee, if required] and prepare the draft permit within the time specified in table 2 of 20.4.2.205 NMAC after receipt of the fees.

(2) Upon receipt of the application fee and the HSWA module preparation

fee, if required, NMED shall schedule a substantive review of the application to ascertain if the application contains all the detailed information required to determine technical adequacy. If the application does not contain the required information the facility shall be directed to make the appropriate changes. If the application contains the required information the facility shall be issued a notice that the application is ready to be reviewed for technical adequacy.]

(3) NMED shall review the application and issue a draft permit or a notice of intent to deny the permit within one year after the application is deemed administratively complete. The secretary may allow an additional ninety (90) days for review upon a determination that good cause exists for the additional review time. The review period set by this subsection shall be tolled during all periods in which NMED is awaiting a response from the applicant to a request for supplemental information or a notice of deficiency.]

D. Permit renewals:

Every [facility] owner or operator seeking to renew a previously issued permit for the treatment, storage or disposal of hazardous waste or for post-closure care shall pay [Permit] an application review and permit preparation fee, and if required, [HSWA module preparation] a corrective action section fee[s], in the amounts and in the manner set forth in [Subsection 201.3] table 2 in 20.4.2.205 NMAC.

E. Interim status closure plan review fees: Every [facility] owner or operator submitting an interim status closure plan for review and approval shall pay [an application] a fee set forth in table [2.3] 3 of 20.4.2.206 NMAC. The [application] fee shall be in an amount equal to the sum of the [application] fees set forth in table [2] 3 of 20.4.2.206 NMAC for each unit included in the closure plan. [A facility is not required to pay the fees prescribed by this subsection for a closure plan included within a permit application.] An application to modify an approved interim status closure plan is subject to the following fees:

(1) [HRMB shall perform an initial review of the closure plan to determine if all the required parts are contained in the closure plan. If any parts are missing the closure plan shall be returned and the facility shall be advised of the missing parts. If the closure plan contains all required parts the facility shall be issued a notice that the closure plan has been deemed administratively complete and shall be invoiced the applicable Application Fee.]

Amendments of plans that are identified as equivalent to a class 1 or a class 2 permit modifications are subject to the corresponding fee in table 4 in 20.4.2.207 NMAC;

(2) [Upon receipt of the application fee, HRMB shall schedule a substan-

tive review of the closure plan to ascertain if the closure plan contains all the detailed information required to determine technical adequacy. If the closure plan does not contain the required information the facility shall be directed to make the appropriate changes. If the closure plan contains the required information the facility shall be issued a notice that the closure plan is ready to be reviewed for technical adequacy.] Amendements of plans identified as equivalent to class 3 permit modifications are subject to the corresponding fee in table 3 in 20.4.2.206 NMAC.

(3) NMED shall review and approve or disapprove a closure plan that is not part of a permit application within one hundred eighty (180) days after the plan is deemed administratively complete. The secretary may allow an additional sixty (60) days upon determination that good cause exists for the additional review time. The review period set by this subsection shall be tolled during all periods in which NMED is awaiting a response by the facility to a Request for Supplemental Information or a Notice of Deficiency and during all time periods in which further action cannot be taken due to public hearing requirements.]

F. Permit [and closure plan] modification fees:

Every [facility] owner or operator [which] who requests a class [H or III] 1, 2, or 3 modification [(other than a request for a No Further Action Determination, for which fees are set forth in Table 2.5)] to a permit [or closure plan], and every [facility] owner or operator [for which the secretary determines pursuant to 40 CFR 270.41 (incorporated into 20 NMAC 4.1.900) that cause exist to modify or revoke and reissue a Permit or Closure Plan, and every facility] whose permit is to be modified as a result of a five (5) year land disposal review shall pay [a Basic] the applicable class modification fee for each modification as set forth in table [2.4] 4 of 20.4.2.207 NMAC. [Every facility which requests a Class I modification for which prior written approval by NMED is required by 40 CFR 270.42 (a) (2) (incorporated into 20 NMAC 4.1.900) shall pay the basic fee for Class I modification set forth in Table 2.4.] If the permit modification request is to add a new unit to the permit the applicable fee in table 2 of 20.4.2.205 NMAC will apply.

G. Closure report review fees: Every owner or operator who submits a closure report for review shall pay a closure report review fee as set forth in table 3 of 20.4.2.206 NMAC.

H. Corrective action [document] submittal review fees: Every [facility] owner or operator [which] who submits a corrective action [document] submittal for review shall pay a corrective action [Document] submittal review fee as

set forth in table [2.5 for the first corrective action unit addressed in the document and shall pay the] 5 of 20.4.2.208 NMAC. An additional unit fee [set forth in Table 2.5] shall be paid for each additional unit [addressed] for submittals that address multiple units. [in the document. Fees are not assessed for additional corrective action units that are referenced in the document and do not require review as part of the submitted document. NMED shall review and approve or disapprove a corrective action document within one hundred eighty (180) days after the document is accepted for review by NMED and the applicable fee has been assessed and paid. The secretary may allow an additional sixty (60) days for review upon a determination that good cause exists for the additional review time. The review period set by this subsection shall be tolled during all periods in which NMED is awaiting a response by the facility to a Request for Supplemental Information or a Notice of Deficiency and during all time periods in which further action cannot be taken due to public hearing requirements.]

H. Hearing fees: An applicant for issuance, renewal, or modification of a permit shall be required to pay a Hearing Fee of \$5,000.00 if the secretary determines that a public hearing shall be held on the application. The Hearing Fee shall be due thirty days after it is invoiced by NMED.]

I. Land disposal review fee: Every owner or operator subject to a review under 20.4.1.900 NMAC (incorporating 40 CFR 270.50 (d)) shall pay a review fee as set forth in table 6 of 20.4.2.209 NMAC. At the time of invoicing, NMED shall notify the owner or operator in writing of any additional information required to process the review.

J. Audit review fee: Every owner or operator subject to an audit review required under a facility permit or enforceable document shall pay an audit fee for each audit as set forth in table 6 of 20.4.2.209 NMAC.

K. FFCO fee: Every owner or operator subject to a review of amendments, annual reports, and revisions under an FFCO shall pay a fee as set forth in table 6 of 20.4.2.209 NMAC. In the event of a conflict between the review times specified in table 6 and the FFCO, the FFCO shall control.

L. Change during interim status fee: Every owner or operator who requests a change during interim status pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.72) shall pay the following fees:

(1) Modifications that are identified as being equivalent to class 1 or class 2 permit modifications are subject to the cor-

responding fee in table 7 in 20.4.2.210 NMAC;

(2) Modifications identified as equivalent to class 3 permit modifications are subject to the corresponding fee in table 7 in 20.4.2.210 NMAC.

[12/31/98; 20.4.2.201 NMAC - Rn, 20 NMAC 4.2.II.201 & A, 8/18/06]

20.4.2.202 ANNUAL FEE REPORT: On or before [August 31, 1999 and] September 30 of every year [thereafter], NMED shall review the amount of fees collected and the amount of money expended administering the hazardous waste management program for the prior state fiscal year and [present] submit a report on its review to the board. The report shall include for each facility the amount of fees collected, [and] the number and types of permitting actions taken, [and documents] submittals reviewed, a summary of the time required to conduct each review or permitting action, and an analysis of the cost of regulatory oversight. The report shall include a summary of funds received and expenses required to administer the state hazardous waste program.

[12/31/98; 20.4.2.202 NMAC - Rn, 20 NMAC 4.2.II.202 & A, 8/18/06]

[20.4.2.203 TABLE 2.1 ANNUAL HAZARDOUS WASTE MANAGEMENT BUSINESS FEE:]

Type of unit	Fee
Disposal	\$ 2,000
Post closure care	\$ 2,000
Treatment	\$ 1,500
Storage	\$ 1,000
Corrective action	\$ 250]

20.4.2.203 HEARING FEES:

A. An applicant for issuance, renewal, or modification of a permit, or remedy selection shall be required to pay the following hearing fees if the secretary determines that a public hearing shall be held on the application;

(1) **Hearing fee:** The applicant shall be invoiced a hearing fee of twenty thousand dollars (\$20,000) within thirty (30) days of notification by the secretary that a hearing will be scheduled.

(2) **Administrative record preparation fee:** The applicant shall pay an administrative record preparation fee equal to the actual cost of copying the administrative record for the public hearing process.

(3) **Facility fee:** The applicant shall pay a facility fee equal to the actual cost of providing the public facility, including security and other ancillary costs, necessary to conduct the public hearing.

(4) **Recording and Transcription service fee:** The applicant shall pay a recording and transcription service fee equal to the actual cost of providing recording and transcription services for the public hearing and providing three copies of the hearing transcript to NMED.

(5) **Translation service fee:** If the secretary determines that translation services are required for the public hearing, the applicant shall pay a translation service fee equal to the actual cost of providing translation services necessary to conduct the public hearing.

(6) The applicant shall be invoiced for the total cost of the hearing within 90 days after the secretary's final decision under Subsection A of 20.4.2.203 NMAC. The hearing fee required under Paragraph (1) of Subsection A of 20.4.2.203 NMAC will be credited against the total cost of the hearing, or if the fee is more than the total cost of the hearing it shall be credited for future actions.

[12/31/98; 20.4.2.203 NMAC - Rn, 20 NMAC 4.2.II.201.8 & 203 & A, 8/18/06]

[20.4.2.204

TABLE 2.2 – APPLICATION AND HSWA PREPARATION FEES:]

[Type of unit	Application
Land disposal	\$ 90,000
Post closure care w/ corrective action	\$ 90,000
Post closure care w/o corrective action	\$ 12,000
Land treatment	\$ 90,000
Surface impoundment	\$ 72,750
Incinerator	\$ 72,750
Boiler or industrial furnace	\$ 72,750
Subpart X	\$ 90,000
Waste pile	\$ 36,000
Treatment in tanks	\$ 36,000
Treatment in containers	\$ 36,000
Storage in tanks	\$ 36,000
Storage in containers	\$ 36,000
Research demonstration and development	\$ 24,000]

	[Basic fee	Additional fee
HSWA module preparation fee	\$ 7,500	\$ 150]

20.4.2.204

TABLE 1 - ANNUAL FEES:

<u>Unit Type</u>	<u>Fee</u>
<u>Disposal</u>	<u>\$4,000</u>
<u>Treatment</u>	<u>\$3,000</u>
<u>Storage</u>	<u>\$2,000</u>
<u>Post Closure</u>	<u>\$4,000</u>
<u>Corrective Action Management (CAMU)</u>	<u>\$4,000</u>
<u>Temporary (TU)</u>	<u>\$3,000</u>
<u>Remedial Action Plan Unit</u>	<u>\$3,000</u>
<u>SWMU/AOC per Unit:</u>	
<u>for the first 150 units (1 to 150)</u>	<u>\$750</u>
<u>for the second 350 units (151 to 500)</u>	<u>\$350</u>
<u>for each unit over 500 (501+)</u>	<u>\$200</u>
<u>Corrective Action Complete with Controls per Unit</u>	<u>\$250</u>

[12/31/98; 20.4.2.204 NMAC - Rn, 20 NMAC 4.2.II.204 & A, 8/18/06]

[20.4.2.205

TABLE 2.3 – CLOSURE PLAN REVIEW FEES:]

[Unit type	Application
Land disposal or land treatment	\$ 25,500
Surface impoundment	\$ 17,500
Incinerator	\$ 17,500
Boiler or industrial furnace	\$ 17,500
Subpart X	\$ 17,500
Waste pile	\$ 12,750
Storage	\$ 12,750
Treatment	\$ 12,750]

20.4.2.205 TABLE 2 - APPLICATION AND CORRECTIVE ACTION SECTION FEES:

<u>Unit Type</u>	<u>Fee</u>	<u>Fee for Renewal or Modification to add a unit</u>	<u>Review Time</u>
<u>Land Disposal</u>	<u>\$90,000</u>	<u>\$60,000</u>	<u>360 days</u>
<u>Post Closure</u>	<u>\$90,000</u>	<u>\$60,000</u>	<u>360 days</u>
<u>Land Treatment</u>	<u>\$90,000</u>	<u>\$60,000</u>	<u>360 days</u>
<u>Surface Impoundment</u>	<u>\$75,000</u>	<u>\$50,000</u>	<u>360 days</u>
<u>Incinerator</u>	<u>\$75,000</u>	<u>\$50,000</u>	<u>360 days</u>
<u>Boiler or Industrial Furnace</u>	<u>\$75,000</u>	<u>\$50,000</u>	<u>360 days</u>
<u>Subpart X</u>	<u>\$90,000</u>	<u>\$60,000</u>	<u>360 days</u>
<u>Waste Pile</u>	<u>\$36,000</u>	<u>\$24,000</u>	<u>360 days</u>
<u>Treatment in Tanks</u>	<u>\$36,000</u>	<u>\$24,000</u>	<u>360 days</u>
<u>Treatment in Containers</u>	<u>\$36,000</u>	<u>\$24,000</u>	<u>360 days</u>
<u>Storage in Tanks</u>	<u>\$36,000</u>	<u>\$24,000</u>	<u>360 days</u>
<u>Storage in Containers</u>	<u>\$36,000</u>	<u>\$24,000</u>	<u>360 days</u>
<u>Research Demonstration and Development</u>	<u>\$24,000</u>	<u>\$16,000</u>	<u>360 days</u>
<u>Remedial Action Plan</u>	<u>\$24,000</u>	<u>\$16,000</u>	<u>360 days</u>
<u>Permit for Corrective Action Only</u>	<u>\$16,000</u>	<u>\$10,000</u>	<u>360 days</u>
<u>Corrective Action Section</u>	<u>\$10,000</u>	<u>\$7,000</u>	<u>N/A</u>
<u>Additional SWMU/AOC Unit Fee</u>	<u>\$1,000 for each additional unit</u>	<u>N/A</u>	<u>N/A</u>

[12/31/98; 20.4.2.205 NMAC - Rn, 20 NMAC 4.2.II.205 & A, 8/18/06]

[20.4.2.206 TABLE 2.4 - PERMIT AND CLOSURE PLAN MODIFICATION FEES:]

<u>Modification class</u>	<u>Basic fee</u>
<u>Class I</u>	<u>\$ 1,000</u>
<u>Class II</u>	<u>\$ 10,000</u>
<u>Class III</u>	<u>\$ 25,000</u>

20.4.2.206 TABLE 3 - INTERIM STATUS CLOSURE PLAN AND INTERIM STATUS AND PERMITTED UNIT CLOSURE REPORT REVIEW FEES:

<u>Unit Type</u>	<u>Fee</u>	<u>Amendment Fee (equivalent to Class 3 permit modification)</u>	<u>Review Time</u>
<u>Land Disposal or Land Treatment</u>	<u>\$20,000</u>	<u>\$10,000</u>	<u>360 days</u>
<u>Surface Impoundment</u>	<u>\$10,000</u>	<u>\$5,000</u>	<u>360 days</u>
<u>Incinerator</u>	<u>\$8,000</u>	<u>\$4,000</u>	<u>270 days</u>
<u>Boiler or Industrial Furnace</u>	<u>\$8,000</u>	<u>\$4,000</u>	<u>270 days</u>
<u>Subpart X</u>	<u>\$10,000</u>	<u>\$5,000</u>	<u>360 days</u>
<u>Waste Pile</u>	<u>\$8,000</u>	<u>\$4,000</u>	<u>270 days</u>
<u>Storage</u>	<u>\$6,000</u>	<u>\$3,000</u>	<u>180 days</u>
<u>Treatment</u>	<u>\$8,000</u>	<u>\$4,000</u>	<u>270 days</u>
<u>Closure Report</u>	<u>\$6,000</u>	<u>NA</u>	<u>180 days</u>

[12/31/98; 20.4.2.206 NMAC - Rn, 20 NMAC 4.2.II.206 & A, 8/18/06]

[20.4.2.207] **TABLE 2.5 – CORRECTIVE ACTION DOCUMENT REVIEW FEES:**

<u>Document type</u>	<u>Basic review fee</u>	<u>Additional unit fee</u>
CMI report	\$ 9,300	\$ 500
CMS report	\$ 7,100	\$ 500
RFI report	\$ 7,100	\$ 500
RFI work plan	\$ 6,500	\$ 500
CMS work plan	\$ 6,500	\$ 500
CMI plan	\$ 6,500	\$ 500
Facility wide work plan	\$ 6,500	\$ 500
QAPP/QMP	\$ 6,500	\$ 500
RCRA implementation plan (RIP)	\$ 6,500	\$ 500
RFA	\$ 4,600	\$ 500
VCM/expedited plan or report	\$ 1,000	\$ 250
VCA plan or report	\$ 500	\$ 250
ICM plan or report	\$ 1,800	\$ 250
Release assessment	\$ 1,500	\$ 250
Phase report (on an approved RFI)	\$ 1,500	\$ 250
Petition for NFA review	\$ 6,000	\$ 250
Facility wide document	\$15,000	None

20.4.2.207 **TABLE 4 - PERMIT MODIFICATION FEES:**

<u>Modification</u>	<u>Fee</u>	<u>Review Time</u>
<u>Class 1 (without prior approval)</u>	<u>\$500</u>	<u>N/A</u>
<u>Class 1 (with prior approval)</u>	<u>\$2,500</u>	<u>120 days</u>
<u>Class 2</u>	<u>\$6,000</u>	<u>Refer to 20.4.1.900 NMAC (incorporating 40 CFR 270.42 (b))</u>
<u>Class 3</u>	<u>\$40,000</u>	<u>360 days</u>
<u>Class 3 - Petition for Corrective Action Complete Review/Petition for No Further Action Review</u>	<u>\$7,000</u> <u>plus \$250 for each additional unit</u>	<u>270 days (plus 30 days for every 10 units over 20)</u>

[12/31/98; 20.4.2.207 NMAC - Rn, 20 NMAC 4.2.II.207 & A, 8/18/06]

20.4.2.208 **TABLE 5 - CORRECTIVE ACTION SUBMITTAL REVIEW FEES:**

<u>Submittal Type</u>	<u>Basic Review Fee</u>	<u>Additional Unit Fee</u>	<u>Review Time</u>
<u>Accelerated Corrective Action Completion Report/Accelerated Corrective Measures Completion Report</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>120 days</u>
<u>Accelerated Corrective Action Work Plan/Accelerated Corrective Measures Work Plan</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>120 days</u>
<u>Certification of Completion per unit</u>	<u>\$500</u>	<u>NA</u>	<u>90 days</u>
<u>Corrective Measures Implementation Report</u>	<u>\$12,000</u>	<u>\$1,000</u>	<u>360 days</u>
<u>Corrective Measures Implementation Work Plan</u>	<u>\$6,500</u>	<u>\$1,000</u>	<u>270 days</u>
<u>Corrective Measures Study Report/ Corrective Measures Evaluation</u>	<u>\$15,000</u>	<u>\$1,000</u>	<u>480 days</u>
<u>Corrective Measures Study Report/ Corrective Measures Evaluation with Risk Assessment</u>	<u>\$20,000</u>	<u>\$1,000</u>	<u>480 days</u>
<u>Corrective Measures Study Workplan/ Corrective Measures Evaluation Workplan</u>	<u>\$7,500</u>	<u>\$1,000</u>	<u>360 days</u>

<u>Interim Measures Monitoring Report</u>	<u>\$500</u>	<u>\$1,000</u>	<u>N/A</u>
<u>Interim Measures Report</u>	<u>\$3,500</u>	<u>\$1,000</u>	<u>120 days</u>
<u>Interim Measures Work Plan</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>90 days</u>
<u>Investigation Report (RFI Report)/Phase Report</u>	<u>\$7,500</u>	<u>\$1,000</u>	<u>270 days</u>
<u>Investigation Report with Risk Assessment</u>	<u>\$10,000</u>	<u>\$1,000</u>	<u>360 days</u>
<u>Investigation Work Plan (RFI Work Plan)</u>	<u>\$10,000</u>	<u>\$1,000</u>	<u>270 days</u>
<u>Monitoring Plan</u>	<u>\$2,500</u>	<u>\$1,000</u>	<u>120 days</u>
<u>Notice of Land Transfer</u>	<u>\$5,000</u>	<u>\$1,000</u>	<u>120 days</u>
<u>Operation and Maintenance Plan</u>	<u>\$2,500</u>	<u>\$1,000</u>	<u>150 days</u>
<u>Periodic Monitoring Report</u>	<u>\$2,000</u>	<u>\$1,000</u>	<u>N/A</u>
<u>Pilot/Aquifer Test Report</u>	<u>\$1,500</u>	<u>\$1,000</u>	<u>120 days</u>
<u>Pilot/Aquifer Test Work Plan</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>90 days</u>
<u>RCRA Facility Assessment (RFA) Report</u>	<u>\$2,500</u>	<u>\$1,000</u>	<u>180 days</u>
<u>Release Assessment/SWMU Assessment Report</u>	<u>\$3,500</u>	<u>\$1,000</u>	<u>90 days</u>
<u>Remedy Completion Report</u>	<u>\$4,500</u>	<u>\$1,000</u>	<u>180 days</u>
<u>Risk Evaluation/Risk Assessment Report</u>	<u>\$6,000</u>	<u>\$1,000</u>	<u>180 days</u>
<u>Status Report</u>	<u>\$2,000</u>	<u>\$1,000</u>	<u>N/A</u>
<u>Well Completion Report</u>	<u>\$500</u>	<u>NA</u>	<u>90 days</u>

[20.4.2.208 NMAC - N, 8/18/06]

20.4.2.209 TABLE 6 - LAND DISPOSAL, AUDIT REVIEW AND OTHER FEES:

<u>Activity</u>	<u>Fee</u>	<u>Review Time</u>
<u>Land Disposal Permit Review</u>	<u>\$10,000</u>	<u>360 days</u>
<u>Audit Review</u>	<u>\$20,000</u>	<u>45 days</u>
<u>FFCO Administration</u>	<u>\$500</u>	<u>90 days</u>

[20.4.2.209 NMAC - N, 8/18/06]

20.4.2.210 TABLE 7 - CHANGE DURING INTERIM STATUS FEES:

<u>Submittal Type</u>	<u>Fee</u>	<u>Review Time</u>
<u>Change without prior approval</u>	<u>\$500</u>	<u>30 days</u>
<u>Change with prior approval (equivalent to Class 1 permit modification)</u>	<u>\$2,500</u>	<u>120 days</u>
<u>Change with prior approval (equivalent to Class 2 permit modification)</u>	<u>\$6,000</u>	<u>120 days</u>
<u>Change with prior approval (equivalent to Class 3 permit modification)</u>	<u>\$10,000</u>	<u>360 days</u>

[20.4.2.210 NMAC - N, 8/18/06]

~~20.4.2.208~~ 20.4.2.211 FEE CALCULATION:

~~(1) The annual hazardous waste management business fee shall be paid in full if permitted hazardous waste management activities took place at the site or unit during any part of the calendar year.~~

A. The annual fee shall be assessed for each unit identified in the facility permit, Part A application, and enforceable document on January 1 of the assessed year. The annual fee shall be waived for hazardous waste management units for which the owner or operator provides documentation to NMED that hazardous waste management activities did not occur at the unit during the previous calendar year. To be considered for the waiver the owner or operator shall submit the documentation to NMED on or before July 1 of each year.

~~(2) The owner and/or operator of the facility, on the date the annual hazardous waste management business fee is due under Section 301 [Subsection A. of 20.4.2.300 NMAC], is liable for payment of that fee in full. Payments will not be refunded because of a transfer of ownership or operations to a new owner or operator.]~~

B. The owner or operator of the facility is liable for payment of the undisputed part of the assessed fee on the date the annual fee is due. Payments will not be refunded because of a transfer of ownership or operations to a new owner or operator.

[20.4.2.211 NMAC - Rn, 20 NMAC 4.2.II.208 & A, 8/18/06]

~~[20.4.2.209]~~ 20.4.2.212 to 20.4.2.299
[RESERVED]

20.4.2.300 ~~[MANNER OF]~~ **PAYMENT, [AND] DUE DATES, AND APPEALS:**

[12/31/98; 20.4.2.300 NMAC - Rn, 20 NMAC 4.2.III.300 & A, 8/18/06]

20.4.2.301 **MANNER OF PAYMENT AND DUE DATES:**

A. Annual Fee Invoices:
[Within (30) days after the completion of the AUA for every facility, HRMB] NMED shall invoice every [facility] owner or operator for the [AHWMBF] annual fee by October 1 of every year. [Payment shall be due within sixty (60) days of receipt of the invoice unless the facility submits to NMED/HRMB a written request and receives written approval to extend the time for payment before the date payment is due.]

B. Review Fees: Any [document(s)] submittals listed in tables 2 [-2 through 2.5] through 7 of 20.4.2.205 NMAC through 20.4.2.210 NMAC submitted by [a facility] an owner or operator for review [and approval] shall [only] be invoiced [after the document has passed an initial review to determine if all the required parts are contained in the document and HRMB staff, or other resources, are available to conduct the review in a timely fashion. If a document does not pass the initial review, the document shall be returned to the facility, and the facility advised of the missing parts. The facility shall then make the required corrections and resubmit the document for review. Payment shall be due within sixty (60) days of receipt of the invoice unless the facility submits to NMED/HRMB a written request, and receives written approval, to extend the time for payment before the date payment is due. Failure to submit payment within the sixty (60) days, or approved extension, will result in the document or permit being denied] for the corresponding fee by NMED.

C. Due Date: Payment of any fee shall be due within sixty (60) days of receipt of the invoice unless the owner or operator submits to NMED a written request seven (7) days prior to the end of the sixty (60) day period and receives written approval to extend the time for payment before the date payment is due. Failure to submit payment within the sixty (60) days, or approved extension, may result in the document being denied, and further enforcement action.

D. All fees shall be paid to [HRMB] NMED by certified check or money order payable to the New Mexico hazardous waste fund, [or] by electronic funds transfer (with prior notice to NMED),

or by other methods deemed acceptable by [HRMB] NMED. Cash payments are not an acceptable method of payment. All payments must include the invoice number and be addressed to the New Mexico environment department - hazardous waste bureau. [12/31/98; 20.4.2.301 NMAC - Rn, 20 NMAC 4.2.III.301 & A, 8/18/06]

20.4.2.302 **APPEAL OF FEE ASSESSMENT:**

A. Mandatory Settlement Conference: Any owner or operator seeking to appeal an invoice for fees under this part must first notify the NMED in writing of the intent to appeal the invoice within thirty (30) calendar days of receipt of the invoice. The notice shall set forth the specific matters in dispute, the basis for the dispute, and any matters considered necessary for NMED's consideration. The parties shall have thirty (30) calendar days from NMED's receipt of notification to meet or confer with NMED to attempt to resolve the matters in the dispute. The secretary may extend deadlines under this section upon a determination that good cause exists. If an agreement is reached resolving the dispute, NMED may issue a revised invoice and the owner and operator shall comply with the terms of such agreement and revised invoice. If an agreement is not reached, NMED shall issue a notification to all parties that an agreement has not been reached. Failure to notify NMED of an appeal in the required timeframe shall prohibit the owner and operator from appeal of the invoice.

B. Administrative appeal:

[A.] (1) An invoice for fees may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary of environment within thirty (30) days of the date of the [invoice] notification that an agreement has not been reached. The written request shall be accompanied by a copy of the invoice being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

[B.] (2) Except as otherwise provided, the appeal shall be governed by [20 NMAC 1.5] 20.1.5. NMAC, Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than ninety (90) days after service of the notice of docketing.

[C.] (3) NMED shall not seek collection of an appealed fee or take enforcement action on an appealed of the fee assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall continue to accrue and shall be payable if the assessment is upheld or upheld with modification. If the assessment is modified on appeal, late

charges shall be calculated based on the assessment as modified.

[D.] (4) If an appeal is not timely filed pursuant to this subsection, the invoice shall constitute a final action of the secretary of environment.

[12/31/98; 20.4.2.302 NMAC - Rn, 20 NMAC 4.2.III.302 & A, 8/18/06]

20.4.2.402 **FAILURE TO PAY FEES:**

A. Failure to pay any fee required by this part may result in enforcement proceedings under the act including but not limited to the revocation or suspension of any permit issued by NMED pursuant to the act to the person failing to pay the fees as required.

B. Fees are not refundable and do not guarantee that a permit will be issued or [document] a submittal or action will be approved by the NMED.

[12/31/98; 20.4.2.402 NMAC - Rn, 20 NMAC 4.2.IV.402 & A, 8/18/06]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

TITLE 19 **N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31** **HUNTING AND
FISHING REGULATIONS
PART 5** **UPLAND GAME**

19.31.5.1 **ISSUING AGENCY:**
New Mexico Department of Game and Fish.

[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 7-31-2006]

19.31.5.2 **SCOPE:** Hunters of Upland Game. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.

[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 7-31-2006]

19.31.5.3 **S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 7-31-2006]

19.31.5.4 **DURATION:** July 31, 2006-March 31, 2007.

[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 7-31-2006]

19.31.5.5 EFFECTIVE DATE:
July 31, 2006 unless a later date is cited at the end of individual sections.
[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 7-31-2006]

19.31.5.6 OBJECTIVE:
Establishing seasons on Blue-winged teal, Green-winged teal, Cinnamon teal, pheasant, Blue grouse, Lesser prairie-chicken, Montezuma quail, Northern bobwhite, Scaled quail, Gambel's quail, Mourning dove, White-winged dove, Eurasian-collared dove, Band-tailed pigeon, Sandhill crane, Abert's squirrel, Red squirrel, and setting falconry seasons.
[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 7-31-2006]

19.31.5.7 DEFINITIONS:

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

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

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

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

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

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

G. "Baiting" shall mean

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

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

I. "Central flyway", shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

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

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

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

M. "Dove north zone" (north zone), shall mean that portion of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

N. "Dove south zone" (south zone), shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

O. "Eastern New Mexico sandhill crane hunt area (eastern)", as used herein, shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

P. "Established road" is defined as follows:

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

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

Q. "Estancia valley sandhill crane hunt area (EV)", shall mean that area beginning at Mountainair bounded on

the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

R. "Falconry" shall mean hunting migratory game birds using raptors.

S. "Lesser prairie-chicken hunting area", shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 60, south along the New Mexico-Texas border to N.M. 234, west on N.M. 234 to N.M. 8, west on N.M. 8 to N.M. 176, west on N.M. 176 to U.S. 62-180, west on U.S. 62-180 to the Pecos river, north along the Pecos river to U.S. 60, east to the New Mexico-Texas border, including all Lesser prairie-chicken management areas owned by the state game commission.

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

U. "Middle Rio Grande valley sandhill crane hunt area (MRGV)", shall mean Valencia and Socorro counties.

V. "Migratory game bird", shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane and all waterfowl species.

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

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

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

Z. "Permanent mobility limitation" shall mean an individual that permanently has: restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations. EXCEPTION: For the purposes of hunting migratory game birds from a vehicle, mobility limitation individuals are those that have permanently lost one or both legs.

AA. "Possession limit", shall mean twice the daily bag limit except where otherwise defined.

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

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

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

CC. "Regular band-tailed pigeon hunting area" (regular BPHA), shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

DD. "Resident upland game", shall mean blue grouse, lesser prairie-chicken, pheasant, Gambel's quail, Montezuma quail, Northern bobwhite, scaled quail, Abert's squirrel, and red squirrel.

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

FF. "Southwest band-tailed pigeon hunting area" (southwest BPHA), shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

GG. "Southwest New Mexico sandhill crane hunt area (SW)", shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

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

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

JJ. "Waterfowl management area" (WMA) shall mean state game commission owned or managed waterfowl management areas.

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 7-31-2006]

19.31.5.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt upland game without having purchased a valid license for the current license year.

(1) For the hunting of **blue grouse, pheasant, quail, and squirrel**; valid upland game licenses are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handi-

capped general hunting and fishing, or small game, or non-resident small game, and temporary small game 4-day licenses. A habitat stamp is required for those hunting on US forest service and bureau of land management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans.

(2) For the hunting of **dove, band-tailed pigeon, waterfowl, or sandhill crane**; in addition to a valid upland game license (see Paragraph (1) of Subsection A of 19.31.5.8 NMAC) a migratory bird permit number shall be required. Additional permits are required for band-tailed pigeon (see Subsection D of 19.31.5.8 NMAC) and sandhill crane (see Subsections E and F of 19.31.5.8 NMAC).

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

C. Applications: Applications for EV, MRGV, and SW special season sandhill crane, Casa Colorado and Seven Rivers special season youth-only pheasant and Casa Colorado, Seven Rivers and W.S. Huey WMA pheasant hunt permits shall be submitted on the appropriate application form.

(1) It shall be unlawful to submit more than one application per species per year. Those submitting more than one application per species will result in the rejection of all applications.

(2) A six-dollar application fee shall be required by each applicant per application submitted.

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

(4) All applications must be mailed to the Santa Fe office unless otherwise specifically allowed by rule. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline. A person desiring a Valencia county landowner pheasant hunt permit shall apply in person to the department office in Albuquerque. A falconer desiring an EV permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office only.

(5) The deadline date for application for the EV, MRGV, and SW sandhill crane hunts shall be the second Saturday in September. The EV falconry crane hunt shall not have an application deadline. Permits will be issued on a first come basis.

(6) The deadline date for application for the Casa Colorado WMA youth-only, Seven Rivers WMA youth-only, Casa Colorado WMA, Seven Rivers WMA and W.S. Huey WMA pheasant hunts shall be the first Saturday in November.

(7) Applications for the Valencia county landowner pheasant hunt permits may be submitted up to the day prior to the hunt.

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

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

(10) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

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

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

E. Requirements and permits for band-tailed pigeon: Hunters and falconers shall have in their possession a Band-tailed pigeon hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office only. Applicants shall submit their name, address, and the number of their general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or non-resident small game, and temporary small game 4-day licenses. Permits shall be free of charge and there shall be an unlimited number of permits available for issue.

F. Requirements and permits for the eastern sandhill crane hunt: Hunters and falconers shall have in their possession a federal Sandhill crane hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail only to the Santa Fe office. Applicants shall submit their name, address, and the number of their general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or

small game, or non-resident small game, and temporary small game 4-day licenses. There shall be an unlimited number of federal permits available for issue.

G. Requirements and permits for the Estancia valley (EV), middle Rio Grande valley (MRGV), and Southwest (SW) special season sandhill crane hunts:

(1) Valid SCR hunt codes are listed in Subsection A of 19.31.5.11 NMAC.

(2) Hunters participating in the MRGV and EV seasons that do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a sandhill crane permit the following year. Hunters participating in the SW seasons who do not submit a questionnaire within five days of the close of their November and/or January hunts will be considered ineligible to receive a sandhill crane permit the following year.

H. Requirements and permits for the Casa Colorado WMA and Seven Rivers WMA youth-only pheasant hunts and Casa Colorado WMA, Seven Rivers WMA and W.S. Huey WMA pheasant hunts: Valid PHE hunt codes are listed in Subsections A of 19.31.5.12 NMAC. Casa Colorado WMA and Seven Rivers WMA youth-only pheasant hunts: Youth hunters participating in this hunt must be accompanied by a non-hunting adult.

I. Requirements and permits for Valencia county pheasant hunt:

(1) Pheasant hunting in Valencia county will be open by permit only. The Valencia county pheasant hunt is scheduled for one day in December with the date to be determined (see Subsection A of 19.31.5.12 NMAC).

(2) Landowners in Valencia county will maintain the ability to hunt and allow hunters on their private property. Landowners will be required to provide proof of ownership and sufficient acreage to accommodate a safe hunt at the northwest (Albuquerque) area office prior to the hunt date. Once sufficient proof has been established, the landowner will be issued unlimited application forms to distribute to hunters they choose. All applications must be obtained from the landowner. Applications for the private land Valencia county pheasant hunt will be unlimited, must be obtained from the landowner and submitted only to the northwest (Albuquerque) area office. Valid hunt codes are listed in Subsection A of 19.31.5.12 NMAC.

J. Requirements and permits for lesser prairie-chicken: The season for the Lesser prairie-chicken is closed.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 7-31-2006]

19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:

A. Season and hours:

Upland game may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset unless otherwise specifically allowed by rule. On state game commission owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m.

(1) For hunting September teal on Bernardo and La Joya WMAs hunting hours are from one-half hour before sunrise to sunset.

(2) For the special permit pheasant hunts on the Seven Rivers WMA, W.S. Huey WMA and the youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4pm.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation. There shall be no daily bag or possession limit for Eurasian-collared dove except that, when the daily aggregate bag limit on mourning and white-winged doves is obtained, all dove hunting shall cease.

C. Tagging:

(1) Any permit or license that permits the taking of sandhill cranes in the MRGV, EV, and SW; shall be issued with tags bearing the name of the species.

(2) It shall be unlawful for any licensee not to properly tag the animal as prescribed below:

(a) IMMEDIATELY after killing any sandhill crane in the MRGV, EV, and SW; the licensee killing the game shall notch the proper day and month of kill from the species tag.

(b) The tag shall be attached to the carcass of sandhill cranes harvested in the MRGV, EV, and SW; and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage.

(3) A species tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any sandhill crane in the MRGV, EV, and SW that are improperly tagged.

E. Use of bait:

(1) It shall be unlawful for anyone to take or attempt to take any protected species, other than quail, by use of baits as

defined in Subsection G of 19.31.5.7 NMAC.

(2) It shall be lawful to take quail from any place or area where quail feeders occur on private property.

F. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any protected species.

G. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any protected species.

H. Killing out-of-season: It shall be unlawful to kill any protected species out-of-season.

I. Legal sporting arms and ammunition:

(1) The following are **legal sporting arms for pheasants, quail, lesser prairie chickens, band-tailed pigeon, doves, sandhill crane, and waterfowl:**

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

(b) bows and arrows; and

(c) crossbows for individuals that qualify with a permanent mobility limitation (see Subsection Z of 19.31.5.7NMAC).

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

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

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows and arrows; and

(e) crossbows for individuals that qualify with a permanent mobility limitation (see Subsection Z of 19.31.5.7NMAC).

(3) **Non-toxic shot** use is required for hunting:

(a) on all state game commission owned lands,

(b) EV, MRGV or SW special sandhill crane seasons (see 19.31.5.11), and

(c) all waterfowl species.

(4) **Use of toxic shot:** It shall be unlawful for any person hunting waterfowl and special season sandhill crane (see 19.31.5.11) to hunt with or be in possession of any shotgun shells loaded with toxic shot.

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

K. Proof of species or sex:

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

(2) The head or a leg of each pheasant taken must remain attached to the bird until the bird has arrived at the person-

al abode of the possessor or storage facility.

(3) One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the bird has arrived at the personal abode of the possessor or storage facility.

(4) All Eurasian-collared dove in possession must be fully feathered and identifiable until the bird has arrived at the personal abode of the possessor or storage facility.

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

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

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

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

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

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

(d) the date and place of the donation.

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

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

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

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

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

(4) **Sale of game animal parts:** It shall be unlawful to sale or barter any parts or feathers from migratory game birds. Only skins, claws or feathers of legally taken resident upland game may be bartered or sold. (Internal organs of protected species may not be sold). The disposer must supply to the recipient a written statement which shall contain the following:

(a) description of the skin, claws,

or feathers involved;

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

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

(d) the date and place of the transaction.

M. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any mammal, bird, fish, reptile or amphibian, except domestic mammals, domestic fowl, or fish from government hatcheries, without first obtaining a permit from the department of game and fish.

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

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

(2) **Vehicles, boats, aircraft:** It shall be unlawful to shoot at any protected species from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION - Migratory birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

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

(4) **Vehicle off of established road:** During the seasons established for any protected species, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) All landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

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

(6) **Handicapped license:**

(a) Shooting from a vehicle: The holder of a handicap license is authorized to shoot at and kill protected species during their respective open seasons from a stationary motor-driven vehicle that is not on a

public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is permanently disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

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

(c) **Assistance for handicapped hunter:** The holder of a handicap license may be accompanied by another person to assist in reducing to possession any resident small game animal which has clearly been wounded by the licensed handicapped hunter. EXCEPTION: Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed (see Subsection A of 19.31.5.8 NMAC).

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

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

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

(3) **Trespass on state game commission owned lands:** It shall be unlawful to hunt, fish, camp, or trespass upon state game commission owned lands unless allowed under regulation or provided for under Subsection O of 19.31.5.9 NMAC.

(4) **The William S. Huey WMA** shall be open for dove, quail hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.

(5) **The Brantley WMA** (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for dove, quail, pheasant, September teal, and sandhill crane hunting during established statewide seasons. Use of vehicles will be restricted to designated areas.

(6) **The Seven Rivers WMA** shall be open for dove, quail, September teal, and sandhill crane hunting in designated areas as posted only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.

(7) That portion of the **Bernardo WMA** south of US-60 is open to teal hunting each day of the September Teal season.

(8) The entire **La Joya WMA** and **Salt Lake WMA** shall be open to teal hunt-

ing each day of the September teal season.

(9) The **Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas** shall be open for hunting species listed herein during established seasons.

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

(11) The **Big Hatchet mountain wildlife management area** shall be open for quail hunting.

(12) The **Sandia ranger district** of the Cibola national forest shall be open to archery only hunting of species listed herein during established seasons.

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

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

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

(4) Sugarite canyon state park.

(5) Valle Vidal area.

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

Q. Regulations pertaining to boats, other floating devices, and motors:

(1) On **Bernardo, La Joya, Salt Lake and Jackson Lake WMAs** only boats and other floating devices using no motors shall be permitted during waterfowl season.

(2) On **Tucumcari WMA**, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On **Charette and McAllister lakes** boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department of game and fish personnel or persons authorized by the director of the department of game and fish may use gaso-line powered outboard motors on all lakes mentioned in this chapter while performing official duties.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 7-31-2006]

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

2006-2007 season: all dates are 2006 unless otherwise specified

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG LIMIT
Teal	central flyway portion of state	Sept. 16-24	4 (singly or in aggregate)
Pheasant	statewide, excluding Valencia county	Dec. 7-10	3 (males)
Special Permit Required *See information; 19.31.5.12 NMAC	Valencia county	Dec. 9	3 (males)
Youth-only pheasant Hunt *See information; 19.31.5.12 NMAC	Seven Rivers WMA and Casa Colorada WMA	Dec. 2	3 (males)
Pheasant (special permit) *See information; 19.31.5.12 NMAC	Seven Rivers WMA, Casa Colorada WMA and W.S. Huey WMA	Dec. 9	3 (males)
Blue grouse	GS-1 GS-2	Sept. 1 - Oct. 15 Oct. 1-31	3 3
Lesser prairie -chicken	SEASON CLOSED		
Quail: Gambel's, scaled, Northern bobwhite and Montezuma (Mearn's)	Statewide	Nov. 15 - Feb. 15, 2007	15 (singly or in aggregate; no more than 5 shall be Mearn's)

Sandhill crane	MRGV	Oct. 28-29	2 (4 per season)
*Special permit required; See information Subsection G of 19.31.5.8 NMAC	EV	Oct. 28-29 & Nov. 4-5	3 (9 per season)
	MRGV	Nov.18-19	2 (4 per season)
	MRGV	Dec.9-10	2 (4 per season)
	Southwest	Nov.4-5	3 (9 per season)
		and	
		Jan. 6-7, 2007	2 (9 per season)
	MRGV	Jan. 13-14, 2007	2 (4 per season)
			(possession-6, regular and special seasons combined)
Sandhill crane	Eastern	Oct. 31- Jan. 31, 2007	3
*Special permit required; See information Subsection F of 19.31.5.8 NMAC			
Band-tailed pigeon	southwest BPHA	Oct. 1-20	5
*Special permit required; See information Subsection E of 19.31.5.8 NMAC	regular BPHA	Sept. 1-20	5
Dove	north zone	Sept. 1-Oct.30	15 (singly or in aggregate)
Mourning, White-winged, and Eurasian-collared doves	south zone	Sept. 1-30 & Dec. 1-30	See Paragraph (1) of Subsection B of 19.31.5.9 NMAC
Tree squirrel	GS-1	Sept. 1-Oct. 31	15 (singly or in aggregate) see Paragraph (1) of Subsection B of 19.31.5.9 NMAC
	GS-2	Oct. 1-Nov. 30	8 (singly or in aggregate)
	S-3	Sept. 1-Oct. 31	
	S-4	Sept. 1-Oct. 31	

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 7-31-2006]

19.31.5.11 HUNT CODES AND PERMITS NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. Seven separate Sandhill crane seasons are scheduled with up to a total of 365 permits available. The permits will be allocated by season as follows: 2006-2007 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
October 28-29	SCR-0-101	MRGV	75
October 28-29 and November 4-5	SCR-0-102	EV	50
November 18-19	SCR-0-103	MRGV	65
December 9-10	SCR-0-104	MRGV	55
November 11-12 and January 6-7, 2007	SCR-0-105	SW	60
January 13-14, 2007	SCR-0-106	MRGV	55
October 28 through November 26	SCR-0-107	EV Falconry	5

B. Hunters who participate in the MRGV and EV seasons shall be required to check-out at designated check stations when they harvest any sandhill cranes. Those hunters participating in the southwest seasons will be requested to check-out only at designated check stations at the end of each hunt date. Falconers are required to report to the department all sandhill cranes harvested in the EV.

[19.31.5.11 NMAC - Rp, 19.31.5.11 NMAC, 7-31-2006]

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

- A. Special permit pheasant hunts will be allocated by season as follows:
 (1) 2006-2007 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
December 2	PHE-0-001	Youth-only Casa Colorado WMA	15
December 2	PHE-0-002	Youth-only Seven Rivers WMA	40
December 9	PHE-0-003	Casa Colorado WMA	10
December 9	PHE-0-004	Seven Rivers WMA	65
December 9	PHE-0-005	W.S. Huey WMA	40
December 9	PHE-0-006	Valencia County landowner permits	Unlimited

(2) Hunters may possess a Valencia County landowner permit in addition to another special permit pheasant hunt.
 [19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 7-31-2006]

19.31.5.13 FALCONRY SEASONS:

- A. Open areas and season dates. 2006-2007 season, all dates are 2006 unless otherwise specified.
 (1) The season for pheasants, Blue grouse, quail, Abert's squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28, 2007.
 (2) The season for dove shall be statewide and shall be open September 1 through November 12 and November 27 through December 30.
 (3) The season for Band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2007 for the southwest hunting area.
 (4) The season for sandhill crane shall be in the eastern New Mexico sandhill crane hunt area and shall be open from October 17 through January 31, 2007.
 (5) The season for sandhill crane in the Estancia Valley shall be October 28 through November 26.
 (6) The season for any duck species and American coot during the September teal season within the central flyway portion of the state shall be open from September 16-24.
 B. Daily bag and possession limits.
 (1) Daily bag limits shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate) and possession limits shall be: pheasant-6; Blue grouse-6; quail 30 (singly or in the aggregate); tree squirrel-16 (singly or in the aggregate) as listed herein.
 (2) Daily bag limit for dove, ducks, Band-tailed pigeon, and sandhill crane shall be 3 birds (in the aggregate) and possession limits shall be 6 birds (in the aggregate) as listed herein.
 (3) Season limit for sandhill crane in the Estancia Valley shall be 9 birds.
 C. Provisions for possession: The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert's squirrels and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those species listed herein that were legally taken during the open falconry season.
 [19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 7-31-2006]

**NEW MEXICO
 DEPARTMENT OF GAME
 AND FISH**

This is an emergency amendment to 19.31.4 NMAC, Section 16, effective 7-18-06.

19.31.4.16 CLOSED WATERS:

- A. **Waters closed to fishing**
 (1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.
 (2) In Catron county: Iron creek from the "barrier" upstream to its headwater in the Gila wilderness.
 (3) In Catron county: Little creek from the "barrier" upstream through all tributaries.
 (4) In Catron county: McKenna, and Spruce and Sacaton creeks.
 (5) In Catron and Sierra counties: Main Diamond creek above the point of confluence with east fork of Diamond creek and the south Diamond creek drainage.

- (6) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry.
 (7) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.
 (8) In Grant county: east fork of Mogollon creek upstream of waterfalls near FS Trail No. 153, including Trail canyon, south fork Mogollon, and Woodrow canyon creeks.
 (9) In Grant county: McKnight creek.
 (10) In Grant county: Sheep coral creek.
 (11) In Lincoln county: posted areas of Alto reservoir and Bonito lake near the outlets.
 (12) In Catron county: White creek from waterfall near White creek cabin upstream to headwaters.
 (13) In Grant county: Black canyon from "barrier" upstream to headwaters, including Aspen canyon and Fall canyon creeks.

- (14) In Catron county: West fork of the Gila river and all tributaries above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Lilley canyon.
(15) In Sandoval county: Capulin creek on Bandelier national park and the Dome wilderness.
B. Taking fish from hatchery waters: No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs hatchery, and Burns canyon lake at Parkview state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.
C. Taking fish from or

through the ice: Fish may be taken from or through the ice except on the following waters: Santa Cruz lake, Monastery lake, and Springer lake.

[19.31.4.16 NMAC - Rp 19.31.4.16 NMAC, 4-15-02; A, 6-25-03; A/E, 3-31-06; A/E, 7-18-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

8 NMAC 4.MAD.733, Disabled and Elderly Home and Community-Based Services Waiver, filed 1-10-97 is repealed and replaced by 8.314.2 NMAC, Disabled and Elderly Home and Community-Based Services Waiver, effective 8-1-2006.

8 NMAC 4.KID.500, Income and Resource Standards, filed 7-25-95 is repealed and replaced by 8.232.500 NMAC, Income and Resource Standards, effective 8-1-2006.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 232 MEDICAID ELIGIBILITY - CHILDREN UNDER 19: 185 PERCENT OR 235 PERCENT OF POVERTY GUIDELINES - CATEGORY 032
PART 500 INCOME AND RESOURCE STANDARDS

8.232.500.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.232.500.1 NMAC - Rp, 8 NMAC 4.KID.000.1, 8/1/06]

8.232.500.2 SCOPE: The rule applies to the general public
[8.232.500.2 NMAC - Rp, 8 NMAC 4.KID.000.2, 8/1/06]

8.232.500.3 STATUTORY AUTHORITY: The New Mexico medicare program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).
[8.232.500.3 NMAC - Rp, 8 NMAC 4.KID.000.3, 8/1/06]

8.232.500.4 DURATION: Permanent
[8.232.500.4 NMAC - Rp, 8 NMAC 4.KID.000.4, 8/1/06]

8.232.500.5 EFFECTIVE DATE:

August 1, 2006, unless a later date is cited at the end of a section.

[8.232.500.5 NMAC - Rp, 8 NMAC 4.KID.000.5, 8/1/06]

8.232.500.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.

[8.232.500.6 NMAC - Rp, 8 NMAC 4.KID.000.6, 8/1/06]

8.232.500.7 DEFINITIONS: [RESERVED]

8.232.500.8 [RESERVED]

8.232.500.9 NEED DETERMINATION:

[8.232.500.9 NMAC - Rp, 8 NMAC 4.KID.500, 8/1/06]

8.232.500.10 RESOURCE STANDARDS: There are no resource standards for applicants/recipients under this category.

[8.232.500.10 NMAC - Rp, 8 NMAC 4.KID.510, 8/1/06]

8.232.500.11 INCOME STANDARDS:

A. AFDC income methodology is used in calculating income for category 032. The applicant/recipient must be a member of an assistance unit with income, after application of deductions and disregards specified in 8.232.500.12 NMAC, of less than 185 percent of the federal poverty guidelines for the size of the assistance unit. See 8.200.520.10 NMAC, *Income Standards*.

B. The income standard is determined by the number of members in the assistance unit, and includes the needs of unborn children, if applicable.

C. Income of parent(s) is considered available to the applicant child(ren) if the parent(s) and children live together.

D. No income from alien sponsor(s), stepparent(s), or grandparent(s) is considered available to the assistance unit.

[8.232.500.11 NMAC - Rp, 8 NMAC 4.KID.520, 8/1/06]

8.232.500.12 EARNED INCOME: Countable earned income is that remaining after all earned income deductions and disregards which are allowable under the old AFDC program methodology, and for which the family qualifies, have been deducted from gross earnings.

A. **Earned income deductions:**

(1) **Earnings deductions:** Deductions from gross earned income shall

be made in determining the net countable earned income of benefit group members.

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

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

(c) An allowable deduction that is not verified at the time of certification or processing of the semiannual report shall not be allowed as a deduction. A deduction verified after certification shall be processed as a change.

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

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

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

(i) costs of materials and supplies;

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

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

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

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

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

(vii) interest paid to purchase income producing property.

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

(i) costs for depreciation, personal business, entertainment expenses, personal transportation to and

from work;

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

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

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

(a) **Child care deduction for households containing only children ages 0 - 5 years:** Deduct an amount equal to the actual cost of child care, but not less than \$375 total cost per month.

(b) **Child care deduction for households containing only child(ren) age 6 years and older:**

(i) Deduct the actual amount up to \$175 per month per child age 6 to 12 years if the wage earner is employed full time.

(ii) Deduct the actual amount up to \$87.50 per month per child age 6 to 12 years if the wage earner is employed part time.

(c) **Child care deduction for households with children less than age 6 years and children over age 6 years:** Deduct the appropriate child care deductions depending on the age(s) of the children.

(i) When determining eligibility for children ages 0 - 5, deduct an amount equal to the actual cost of child care for all children in the household 0 - 12 years, but not less than \$375 total cost per month.

(ii) When determining eligibility for children age 6 years and older, deduct the actual amount up to \$175 per month per child for all children in the household age 2 -12 years if the wage earner is employed full time. Deduct the actual amount up to \$87.50 per month per child for any children in the household age 2 - 12 years if the wage earner is employed part time. Deduct the actual amount up to \$200 per month per child for all children in the household under 2 years of age if the wage earner is employed full time. Deduct the actual amount up to \$100 per month per child for all children in the household under 2 years of age if the wage earner is employed part time.

B. Earned income disregards: Earned income disregards are allowed based on ages of the children in the household:

(1) households with children age(s) 0 - 5 years: disregard \$750 per

month.

(2) households with children age(s) 6 - 19 years: disregard \$90 per month per employed parent.

(3) households with children in both age groups:

(a) first apply the \$750 per month disregard. Only children age(s) 0 - 5 years can be eligible using this disregard;

(b) for children age(s) 6 - 19 years apply only the \$90 per employed parent disregard.

[8.232.500.12 NMAC - Rp, 8 NMAC 4.KID.521, 8/1/06]

8.232.500.13 C O U N T A B L E I N C O M E: Countable income is determined by subtracting the earned income deductions specified in 8.232.500.12 NMAC and following subsections from the gross earned income of the assistance unit. Add the unit's gross unearned income to the earned income total as determined above.

[8.232.500.13 NMAC - Rp, 8 NMAC 4.KID.526, 8/1/06]

8.232.500.14 L U M P S U M P A Y - M E N T S: Lump sum payments are considered income in the month received, unless specifically excluded under medicaid regulations. Lump sum payments are considered resources, if retained, as of the first of the moment of the first day of the following month. See 8.232.500.10 NMAC.

[8.232.500.14 NMAC - Rp, 8 NMAC 4.KID.527, 8/1/06]

HISTORY OF 8.232.500 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center.

ISD 290.1000, Medical Assistance for Woman and Children, filed 11/13/84.

ISD FA 830, Medical Assistance for Woman and Children and AFDC Related Groups, filed 2/10/88.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 8/11/88.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 9/8/88.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 9/30/88.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/1/88.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 3/31/89.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/8/89.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related

Groups; filed 12/28/89.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 12/29/89.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 3/1/91.

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/5/92.

History of Repealed Material:

MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups; filed 6/5/92 - Repealed effective 2/1/95.

8 NMAC 4.KID.500, Income and Resource Standards, filed 7/25/95 - Repealed effective 8/1/2006.

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 314 LONG TERM CARE SERVICES-WAIVERS
PART 2 DISABLED AND ELDERLY HOME AND COMMUNITY-BASED SERVICES WAIVER**

8.314.2.1 ISSUING AGENCY: New Mexico Human Services Department. [8.314.2.1 NMAC - Rp, 8 NMAC 4.MAD.000.1, 8-1-06]

8.314.2.2 SCOPE: The rule applies to the general public. [8.314.2.2 NMAC - Rp, 8 NMAC 4.MAD.000.2, 8-1-06]

8.314.2.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 27-2-12 et seq. (Repl. Pamp. 1991). [8.314.2.3 NMAC - Rp, 8 NMAC 4.MAD.000.3, 8-1-06]

8.314.2.4 D U R A T I O N : Permanent. [8.314.2.4 NMAC - Rp, 8 NMAC 4.MAD.000.4, 8-1-06]

8.314.2.5 EFFECTIVE DATE: August 1, 2006, unless a later date is cited at the end of a section. [8.314.2.5 NMAC - Rp, 8 NMAC 4.MAD.000.5, 8-1-06]

8.314.2.6 OBJECTIVE: The

objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, non-covered services, utilization review, and provider reimbursement.

[8.314.2.6 NMAC - Rp, 8 NMAC 4.MAD.000.6, 8-1-06]

8.314.2.7 DEFINITIONS:
[RESERVED]

8.314.2.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.

[8.314.2.8 NMAC - Rp, 8 NMAC 4.MAD.002, 8-1-06]

8.314.2.9 DISABLED AND ELDERLY HOME AND COMMUNITY BASED SERVICES WAIVER: To help New Mexicans who are disabled or elderly receive services in a cost-effective manner, the human services department, medical assistance division (HSD/MAD) has obtained a home and community-based services (HCBS) waiver. The disabled and elderly (D&E) waiver provides home and community based services to eligible recipients who are disabled or elderly, as an alternative to institutionalization. These regulations describe disabled and elderly waiver eligible recipients, eligible providers, covered waiver services, non-covered services, utilization review and provider reimbursement.

[8.314.2.9 NMAC- Rp, 8 NMAC 4.MAD.733, 8-1-06]

8.314.2.10 ELIGIBLE PROVIDERS:

A. Eligible independent providers and provider agencies must be approved by the D&E waiver state-operating agency, aging and long-term services department, elderly and disabilities services division (ALTSD/EDSD) or its designee, and have an approved medicaid provider agreement with MAD.

B. Individual service providers participate as employees or contractors of approved agencies, except as otherwise recognized by these regulations. Providers may subcontract only with individuals who are qualified and must follow the general contract provisions for subcontracting.

C. Providers are required to follow the licensing regulations set forth by their profession, as applicable. This includes, but is not limited to nurses, social workers, physical therapists (PT), physical therapy assistants (PTAs), occupational

therapists (OT), certified occupational therapy assistants (COTAs), and speech language pathologists (SLP). Refer to the New Mexico board of licensure for information regarding applicable licenses.

D. Once enrolled, providers receive information including medicaid program policies, billing instructions, utilization review instructions, and other pertinent materials from MAD and ALTSD/EDSD. Providers are responsible for ensuring they have received the materials and updates as MAD or ALTSD sends new materials.

E. Qualifications of case management providers:

(1) Case management services may be provided by eligible case management agencies or independent case management providers.

(2) Case management agencies and independent case management providers must:

(a) comply with all applicable federal, state and waiver regulations, policies, procedures and service standards regarding case management services;

(b) provide supervision to each case manager at least monthly;

(c) ensure that each case manager has the following qualifications:

(i) a current social work license as defined by the NM board of social work examiners; or

(ii) a current registered nursing license as defined by the NM board of nursing; or

(iii) a bachelor's degree in social work, counseling, nursing, special education, or closely related field;

(iv) one year of supervised clinical experience with the disabled or elderly population; and

(v) all other qualifications set forth in D&E waiver service standards.

F. Qualifications of homemaker providers:

(1) Homemaker services may be provided by eligible homemaker agencies.

(2) Homemaker agencies may be licensed by the department of health (DOH) as a home health agency pursuant to 7.28.2 NMAC [7 NMAC 28.2].

(3) Homemaker providers must:

(a) comply with all applicable federal, state and waiver regulations, policies, procedures and service standards regarding homemaker services;

(b) provide supervision to each homemaker staff at least once a month; supervision must include an on-site observation of the services provided and a face-to-face interview of the individual being served;

(c) comply with the Department of Health Act, NMSA 1978, Section 9-7-1,

et. seq. and the Employee Abuse Registry Regulations, NMSA 1978, Sections 27-7A-1 to 27-7A-8 (2005).

(4) Have available and maintain a roster of trained and qualified homemaker employees for back-up or regular scheduling and emergencies.

(5) Homemaker providers must ensure that each homemaker staff meets the following requirements:

(a) completes a homemaker services training program that may include, but is not limited to, agency in-service training or continuing education classes; all training must be documented as required in ALTSD/EDSD D&E waiver service standards.

(i) New staff must complete ten (10) hours of training prior to providing homemaker services;

(ii) Following the first year of service provision, staff must complete a minimum of ten (10) hours of training annually.

(iii) New staff must complete a written competency test that demonstrates the skill and knowledge required to provide homemaker services with a minimum passing score of eighty-five (85%) or better, prior to or within 30 days of providing services.

(iv) Staff assigned to new clients must receive instructions specific to the individual recipient prior to providing services to the recipient;

(b) a minimum of one (1) year experience as an aide in a hospital, nursing facility or rehabilitation center; or two (2) years experience in managing a home or family;

(c) successfully passed nationwide criminal history screening pursuant to 7.1.9 NMAC and in accordance with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act; documentation that the screen has been successfully passed must be maintained in the employee's personnel file;

(d) a current tuberculin (TB) skin test and/or a chest x-ray upon initial employment by the provider as defined by the DOH; a copy of these results must be maintained in the employees personnel file;

(e) a current cardiopulmonary resuscitation (CPR)/heart saver certification; a copy of this certification must be maintained in the employee's personnel file;

(f) a current first aid certification; a copy of this certification must be maintained in the employee's personnel file;

(g) a valid New Mexico driver's license and a motor vehicle insurance policy if the waiver recipient is to be transported by staff; copies of the driver's license and motor vehicle insurance policy must be maintained in the employee's personnel

file; and

(h) other qualifications set forth in D&E waiver service standards.

G. Qualifications of private duty nursing providers:

(1) Private duty nursing services must be provided by a licensed home health agency, licensed or certified rural health clinic or federally qualified health center using only registered nurses (RNs), licensed practical nurses (LPNs) and vocational nurses, or an independent provider.

(2) Private duty nursing agency providers must have a valid DOH home health agency license pursuant to 7.28.2 NMAC [7 NMAC 28.2], or valid licensed rural health clinic or federally qualified health center pursuant to 7.13.2 NMAC [7 NMAC 13.2].

(3) Private duty nursing providers must:

(a) comply with all applicable federal, state and waiver regulations, policies, procedures and service standards regarding private duty nursing services;

(b) ensure that each private duty nurse meets the following qualifications:

(i) has a current RN license as defined by the NM board of nursing; or

(ii) has a current practical nursing license as defined by the NM board of nursing; or

(iii) has a current vocational nursing license as defined by the NM board of nursing; and

(c) meet all other qualifications set forth in D&E waiver service standards.

H. Qualifications of respite providers: Respite services include homemaker services or private duty nursing services (by an RN or LPN).

(1) Respite services may be provided by eligible homemaker or private duty nursing agencies.

(2) Respite services may be provided by homemaker staff or private duty nurses (either RNs or LPNs) based on the waiver recipient's needs.

(3) Homemaker respite providers must meet all qualifications described above in Subsection F, *Qualifications of homemaker providers*.

(4) Private duty nursing respite providers must meet all qualifications described above in Subsection G, *Qualifications of private duty nursing providers*.

I. Qualifications of skilled maintenance therapy provider agencies: Skilled maintenance therapy includes PT for adults, OT for adults, and speech and language therapy (SLT) for adults.

(1) Skilled maintenance therapy services may be provided by eligible skilled

maintenance therapy agencies or independent therapists.

(2) Physical, occupational and speech and language therapists, and PTAs must possess a therapy license in their respective field from the New Mexico regulation and licensing department. COTAs must possess an occupational therapy assistant certification from the New Mexico regulation and licensing department. Speech clinical fellows must possess a clinical fellow license from the New Mexico regulation and licensing department.

(3) Skilled maintenance therapy providers must:

(a) comply with all applicable federal, state and waiver regulations, policies, procedures and service standards regarding homemaker services;

(b) ensure that all PTAs, COTAs and speech clinical fellows are evaluated by a licensed therapist supervisor licensed in the same field at least monthly in the setting where therapy services are provided. Bi-monthly face-to-face or non-face-to-face supervision must be provided;

(c) ensure all therapy services are provided under the order of the waiver recipient's primary care provider; the therapy provider will obtain the order; the original of this order must be maintained by the therapy provider in the recipient's therapy file and the therapy provider must give a copy of the order to the case manager; and

(d) meet all other qualifications set forth in D&E waiver service standards.

J. Qualifications for assisted living service provider agencies:

(1) Assisted living services may be provided by an eligible assisted living facility agency.

(2) Assisted living service provider agencies must be licensed as an adult residential care facility by DOH pursuant to 7.8.2 NMAC.

(3) Assisted living facilities must:

(a) meet all the requirements and regulations set forth by DOH as an adult residential care facility pursuant to 7.8.2 NMAC et seq.;

(b) provide a home-like environment; and

(c) comply with the provisions of Title II and III of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. Section 12101, et seq.):

(4) Assisted living providers must:

(a) comply with all applicable federal, state and waiver regulations, policies, procedures and service standards regarding homemaker services;

(b) ensure that individuals providing direct services meet all requirements for homemaker services;

(c) ensure that individuals provid-

ing private duty nursing and skilled therapy services meet all requirements for these services if provided; and

(d) meet all other qualifications set forth in D&E waiver service standards.

K. Qualifications of adult day health provider agencies:

(1) Adult day health services may be provided by eligible adult day health agencies.

(2) Adult day health facilities must be licensed by DOH as an adult day care facility pursuant to 7.13.2 NMAC [7 NMAC 13.2].

(3) Adult day health facilities must meet all requirements and regulations set forth by DOH as an adult day care facility pursuant to 7.13.2 NMAC [7 NMAC 13.2].

(4) Comply with the provisions of Title II and III of the Americans with Disabilities Act of 1990, (42 U.S.C. Section 12101, et seq.).

(5) Comply with all applicable city, county or state regulations governing transportation services.

(6) Meet all other qualifications set forth in D&E waiver service standards.

L. Qualifications for environmental modifications providers:

(1) Environmental modification services may be provided by eligible environmental modification agencies.

(2) Environmental modification providers must have valid New Mexico regulation and licensing department, construction industries division, GB-2 class construction license pursuant to the Construction Industries Licensing Act NMSA 1978, Section 60-13-1 et seq.

(3) Environmental modification providers must:

(a) comply with all New Mexico state laws, rules, and regulations, including applicable building codes, and the laws and regulations of the Americans with Disability Act Accessibility Guidelines (ADAAG), the Uniform Federal Accessibility Standards (UFAS), and the New Mexico State Building Code;

(b) provide at minimum a one-year warranty on all parts and labor; and

(c) meet all other qualifications set forth in D&E waiver service standards.

M. Qualifications for emergency response providers:

(1) Emergency response services may be provided by eligible emergency response agencies.

(2) Emergency response providers must comply with all laws, rules and regulations of the New Mexico state corporation commission for telecommunications and security systems, if applicable.

(3) Emergency response providers must meet all other qualifications

set forth in D&E waiver service standards. [8.314.2.10 NMAC - Rp, 8 NMAC 4.MAD.733.1, 8-1-06]

8.314.2.11 PROVIDER RESPONSIBILITIES:

A. Providers who furnish services to medicaid recipients must comply with all medicaid participation requirements as outlined in 8.302.1 NMAC, *General Provider Policies*.

B. Verify every month that each recipient is eligible for full medicaid coverage and D&E waiver services prior to providing services pursuant to Subsection A of 8.302.1.11 NMAC, *General Provider Policies*; providers must document the date and method of eligibility verification (i.e. HSD/MAD contracted agency's automated voice response system (AVRS), or eligibility help desk); possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the individual's financial eligibility; agencies that provide D&E waiver services to individuals who are not medicaid or D&E waiver eligible cannot bill medicaid for the services provided to the individual.

C. Maintain records that are sufficient to fully disclose the extent and nature of the services provided to the individual as outlined in 8.302.1 NMAC, *General Provider Policies*.

D. Comply with random and targeted audits conducted by the department or its audit agent that ensure providers are billing appropriately for services provided; the department or its designee will seek recoupment of funds from providers when audits show inappropriate billing for services.

E. Comply with DOH incident reporting and investigation requirements for providers of community based services pursuant to 7.1.13 NMAC.

F. Maintain a continuous quality management program with annual reports of the program implementation and outcomes. Reports must be submitted to ALTSD pursuant to D&E regulations. [8.314.2.11 NMAC - Rp, 8 NMAC 4.MAD.733.2, 8-1-06]

8.314.2.12 ELIGIBLE RECIPIENTS:

A. The program is limited to the number of federally authorized unduplicated recipient (UDR) positions and program funding.

B. D&E waiver services are limited to individuals who have received an allocation for D&E waiver services and who meet institutional level of care criteria and institutional financial criteria as determined by HSD. Pursuant to 8.290.400.10

NMAC, *Basis for Defining the Group*.

C. In addition to meeting institutional criteria specified above, individuals must meet the following requirements to be eligible for D&E waiver services:

(1) persons who are elderly (age 65 or older), or persons aged 21 to 64 with a disability (blind or disabled) as determined by the disability determination unit utilizing social security disability guidelines, who reside in the community; or

(2) persons who are elderly (age 65 or older), or persons aged 21 to 64 with a disability (blind or disabled) as determined by the disability determination unit utilizing social security disability guidelines, who are institutionalized or are at risk of institutionalization.

[8.314.2.12 NMAC - Rp, 8 NMAC 4.MAD.733.3, 8-1-06]

8.314.2.13 COVERED WAIVER SERVICES:

The D&E waiver covers the following services for a specified and limited number of waiver recipients as a cost effective alternative to institutionalization in a nursing facility.

A. **Case management services:** Case management services are person-centered and intended to support individuals in pursuing their desired life outcomes by assisting them in accessing support and services necessary to achieve the quality of life that they desire, in a safe and healthy environment. Case management services assist participants in gaining access to needed D&E waiver services, medicaid state plan services, and needed medical, social, educational and other services, regardless of the funding source for the services to which access is needed.

(1) Case management services include but are not limited to activities such as: assessing needs; facilitating eligibility determination for persons with developmental disabilities; directing the service planning process; advocating on behalf of the individual; coordinating service delivery; assuring services are delivered as described in the individualized service plan (ISP); and maintaining a complete current central client record (e.g., ISP, ISP budget, level of care documentation, assessments).

(a) Cost-effectiveness is a waiver program requirement mandated by federal policy. The fiscal responsibilities of the case manager include assuring cost containment by exploring other options to address expressed needs. Case management services are intended to assist individuals to enable, not replace, existing natural supports and other available community resources in collaboration with waiver services.

(b) Case managers must evaluate and monitor direct service through face-to-

face visits with the individual to ensure the health and welfare of the recipient, and to monitor the implementation of the ISP. Case managers must follow DOH incident reporting and investigation requirements for providers of community-based services pursuant to 7.1.13 NMAC.

(c) Case management services must be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards.

B. **Homemaker services for adults:** Homemaker services are services provided to adults on an episodic or continuing basis that enables participants to accomplish tasks that they would normally do for themselves if they did not have a disability. Homemaker services assist the participants to maintain the home (or living area occupied by the participant) in a clean and safe environment and assist the recipient in activities of daily living. Homemaker services are provided in accordance with the ISP.

(1) The types of assistance include:

(a) household services (e.g., mopping, dusting, vacuuming, bed making, changing linen, recipient's laundry, cleaning bathroom and kitchen areas);

(b) personal care (e.g., hygiene/grooming, bathing, showering, dressing, shaving, oral care, nail care, perineal care, toileting);

(c) bowel and bladder elimination, catheter care and colostomy care;

(d) skin care;

(e) support for the self administration of medication including prompting and reminding in accordance with the New Mexico Nursing Practice Act NMSA 1978, Section 61-3-1, et seq.;

(f) mobility assistance (e.g., ambulation and transfers);

(g) assistance with therapeutic activities or an individualized exercise program;

(h) meal preparation (e.g., preparation, eating or feeding supports);

(i) minor maintenance of assistive devices (e.g., changing batteries on a communication board, routine cleaning of equipment) and minor wheelchair maintenance; and

(j) support services that promote participants' independence (e.g., accompaniment or assistance with transportation, shopping, errands, translating/interpreting).

(2) Homemaker services must be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards.

C. **Private duty nursing**

services for adults: Private duty nursing services include activities, procedures, and treatment for a physical condition, physical illness or chronic disability.

(1) Services include the following:

- (a) medication management, administration and teaching;
- (b) aspiration precautions;
- (c) feeding tube management;
- (d) gastrostomy and jejunostomy;
- (e) skin care and wound care;
- (f) weight management;
- (g) urinary catheter management and bowel and bladder care;
- (h) health education;
- (i) health screening;
- (j) infection control and environmental management for safety;
- (k) nutrition management;
- (l) oxygen management;
- (m) seizure management and precautions;
- (n) anxiety reduction;
- (o) staff supervision; and
- (p) behavior and self-care assistance.

(2) Private duty nursing services must be provided under the order and direction of the recipient's primary care provider, in accordance with the New Mexico Nursing Practice Act NMSA 1978, Section 61-3-1, et seq. and in conjunction with the interdisciplinary team and the case manager.

(3) Private duty nursing services must be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards. (Children receive this service through the medicaid early periodic screening, diagnosis and treatment (EPSDT) program.)

D. Respite services:

Respite services are provided to participants unable to care for themselves and are furnished on a short-term basis because of the absence or need for relief of the unpaid primary caregiver normally providing the care.

(1) Respite services may consist of homemaker services or private duty nursing services, based on the recipient's needs.

(2) Respite services may be provided in a participant's home, the respite provider's home, or the community.

(3) Services include assistance with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills, and providing opportunities for leisure, play and other recreational activities, and allowing community integration opportunities.

(4) Respite services are limited to a maximum of 336 hours annually per ISP

year.

E. **Skilled therapy services for adults:** Skilled therapy services for adults include PT, OT and SLT services. (Children receive this service through the medicaid EPSDT program.)

(1) PT promotes gross or fine motor skills, facilitates independent functioning or prevents progressive disabilities.

(a) Specific services may include:

- (i) professional assessment(s), evaluations and monitoring for therapeutic purposes;

- (ii) PT treatment interventions;

- (iii) training regarding PT activities;

- (iv) use of equipment and technologies or any other aspect of the individual's PT services;

- (v) designing, modifying or monitoring use of related environmental modifications;

- (vi) designing, modifying and monitoring use of related activities supportive to the ISP goals and objectives; and

- (vii) consulting or collaborating with other service providers or family members, as directed by the participant.

(b) PT services must be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards.

(2) OT promotes fine motor skills, coordination, sensory integration, facilitates the use of adaptive equipment or other assistive technology, facilitates independent functioning, and prevents progressive disabilities.

(a) Specific services may include:

- (i) teaching daily living skills;

- (ii) developing perceptual motor skills and sensory integrative functioning;

- (iii) designing, fabricating or modifying assistive technology or adaptive devices;

- (iv) providing assistive technology services;

- (v) designing, fabricating or applying selected orthotic or prosthetic devices or selecting adaptive equipment;

- (vi) using specifically designed crafts and exercise to enhance function;

- (vii) training regarding OT activities; and

- (viii) consulting or collaborating with other service providers or family members, as directed by the participant.

(b) OT services must be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards.

(3) SLT preserves abilities for independent function in communication, facilitates oral motor and swallowing function, facilitates use of assistive technology, and prevents progressive disabilities.

(a) Specific services may include:

- (i) identifying communicative or oropharyngeal disorders and delays in the development of communication skills;

- (ii) preventing communicative or oropharyngeal disorders and delays in the development of communication skills;

- (iii) developing eating or swallowing plans and monitoring their effectiveness;

- (iv) using specifically designed equipment, tools, and exercises to enhance function;

- (v) designing, fabricating or modifying assistive technology or adaptive devices;

- (vi) providing assistive technology services;

- (vii) adapting the participant's environment to meet his needs;

- (viii) training regarding SLT activities; and

- (ix) consulting or collaborating with other service providers or family members, as directed by the participant.

(b) SLT services must be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards.

F. **Assisted living services:** Assisted living is a residential service that includes homemaker services, companion services, medication management (to the extent required under state law; medication oversight as required by state law), 24-hour on-site response capability to meet scheduled or unpredictable participant needs, and to provide supervision, safety and security. Services also include social and recreational programming.

(1) Coverage does not include 24-hour skilled care or supervision.

(2) Rates for room and board are excluded from the cost of services and are either billed separately by the provider or an itemized statement is developed that separates the costs of waiver services from the costs of room and board.

(3) Nursing and skilled therapy services are incidental, rather than integral to the provision of assisted living services. Nursing and skilled therapy services may be

provided by third parties and must be coordinated with the assisted living provider.

(4) Assisted living providers must enter into an agreement with the recipient that details all aspects of care to be provided including identified risk factors. The original agreement must be maintained in the recipient's file and a copy must be provided by the assisted living provider to the case manager.

(5) Assisted living services must be provided as set forth by DOH as adult residential care facilities, pursuant to 7.8.2 NMAC *et seq.* and all other applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards.

G. Adult day health services: Adult day health services offer health and social services to assist participants to achieve optimal functioning and activates, motivates and rehabilitates the participant in all aspects of their physical and emotional well-being, based on the recipient's individual needs.

(1) Services include:

(a) a variety of activities for recipients that promote personal growth and enhance the recipient's self-esteem by providing opportunities to learn new skills and adaptive behaviors, improve capacity for independent functioning, or provide for group interaction in social and instructional programs and therapeutic activities; all activities must be supervised by program staff;

(b) supervision of self-administered medication as determined by the New Mexico Nursing Practice Act NMSA 1978, Section 61-3-1, *et seq.*;

(c) involvement in the greater community;

(d) homemaker services;

(e) transportation to and from the adult day health program; and

(f) meals that do not constitute a, "full nutritional regime," of 3 meals per day.

(2) Services are generally provided for two or more hours per day on a regularly scheduled basis, for one or more days per week, by a licensed adult day-care, community-based facility.

(3) The provider must assure safe and health conditions for activities inside or outside the facility.

(4) Adult day health services include nursing services and skilled maintenance therapies (physical, occupational and speech) that must be provided in a private setting at the facility. The nursing and skilled maintenance therapies do not have to be directly provided by the facility. If directly provided, the facility must meet all program requirements for the provision of these services.

(5) Adult day health services must be provided as set forth by DOH as an adult

day health facility, pursuant to 7.13.2 NMAC [7 NMAC 13.2] *et seq.* and all other applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD D&E waiver service standards.

H. Environmental modification services: Environmental modifications services include the purchase and installation of equipment and making physical adaptations to an individual's residence that are necessary to ensure the health, welfare and safety of the individual or enhance the individual's level of independence.

(1) Adaptations include the following:

(a) installation of ramps and grab bars;

(b) widening of doorways or hallways;

(c) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;

(d) purchase or installation of lifts or elevators;

(e) modification of bathroom facilities (roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing);

(f) turnaround space adaptations;

(g) specialized accessibility, safety adaptations or additions;

(h) installation of trapeze and mobility tracks for home ceilings;

(i) purchase or installation of automatic door openers or doorbells, voice-activated, light-activated, motion-activated and electronic devices;

(j) fire safety adaptations;

(k) purchase or installation of modified switches, outlets or environmental controls for home devices;

(l) purchase or installation of alarm and alert systems or signaling devices;

(m) air filtering devices;

(n) heating/cooling adaptations;

(o) glass substitute for windows and doors.

(2) Case managers must consider alternative methods of meeting the individual's needs prior to listing environmental modifications on the ISP.

(3) Environmental modifications have a limit of \$7,000 every five (5) years.

(4) The environmental modification provider must ensure proper design criteria is addressed in planning and design of the adaptation, provide or secure licensed contractor(s) or approved vendor(s) to provide construction or remodeling services, provide administrative and technical oversight of construction projects, provide consultation to family members, waiver providers and contractors concerning envi-

ronmental modification projects to the individual's residence, and inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

(5) The environmental modification provider must submit the following information and documentation to the case manager as required by ALTSD/EDSD D&E waiver service standards, for approval and written authorization from ALTSD/EDSD:

(a) an environmental modification evaluation;

(b) a service cost estimate including equipment, materials, supplies, labor, travel, per diem;

(c) a letter of acceptance of service cost estimate signed by the recipient;

(d) a letter of permission from owner of property;

(e) a construction letter of understanding;

(f) photographs of the proposed modification; and

(g) documentation demonstrating compliance with the ADAAG, the UFAS, and the New Mexico State Building Code.

(6) Confirmation of approval must be obtained from ALTSD/EDSD prior to the start of all environmental modification work.

(7) After the completion of work, the environmental modification provider must submit the following to ALTSD/EDSD and the case manager:

(a) a letter of approval of work completed, signed by the recipient; and

(b) photographs of the completed modifications.

(8) Environmental modification services must be managed by professional staff available to provide technical assistance and oversight for environmental modification projects.

(9) Environmental modification services shall be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures including applicable federal, state and local building codes, and ALTSD/EDSD D&E waiver service standards.

I. Emergency response services: Emergency response services provide an electronic device that enables a participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center when a "help" button is activated. The response center reacts to the signal to ensure the recipient's health and safety.

(1) Emergency response services include:

(a) installing, testing and main-

taining equipment;

(b) training participants, caregivers and first responders on use of the equipment;

(c) twenty-four (24) hour monitoring for alarms;

(d) checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.; and

(e) reporting participant emergencies and changes in the participant's condition that may affect service delivery.

(2) The response center must be staffed by trained professionals.

(3) Emergency response service categories consist of emergency response, emergency response high need and emergency response installation/disconnect.

(4) Emergency response providers shall provide the recipient with information regarding services rendered, limits of services and information regarding agency service contracts.

(5) Emergency response providers must report recipient emergencies and changes in the recipient's condition that may affect service delivery to the case manager within 24 hours.

(6) Emergency response providers must complete quarterly reports for each recipient served. The original report must be maintained in the recipient's file and a copy must be submitted by the emergency response provider to the case manager.

(7) Emergency response services shall be provided in accordance with all applicable federal, state and waiver program regulations, policies and ALTSD/EDSD D&E waiver service standards.

[8.314.2.13 NMAC - Rp, 8 NMAC 4.MAD.733.4, 8-1-06]

8.314.2.14 NON-COVERED SERVICES:

Only the services listed as covered waiver services in these regulations are provided under the D&E waiver program. D&E waiver eligible recipients qualify for full state plan medicaid benefits. Additional services may be accessed through medicaid state plan services. See 8.301.3 NMAC, *General Noncovered Services* for an overview of non-covered services. Medicaid does not cover room and board as waiver service or ancillary services.

[8.314.2.14 NMAC - Rp, 8 NMAC 4.MAD.733.5, 8-1-06]

8.314.2.15 INDIVIDUALIZED SERVICE PLAN (ISP):

An ISP must be developed by an interdisciplinary team of professionals in collaboration with the recipient and others involved in the recipient's care. The ISP must be in accordance

with the ALTSD/EDSD D&E waiver service standards. The ISP is submitted to MAD or its designee for prior authorization. MAD or its designee must approve any changes to the ISP.

A. The interdisciplinary team must review the treatment plan at least every six (6) months or more often if indicated.

B. The individualized services plan must contain the following information:

(1) statement of the nature of the specific problem and the specific needs of the recipient;

(2) description of the functional level of the recipient.

(3) statement of the least restrictive conditions necessary to achieve the purposes of treatment;

(4) description of intermediate and long-range goals, with a projected timetable for their attainment and the duration and scope of services;

(5) statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including provision for review and modification of the plan; and

(6) specification of responsibilities for areas of care, description of needs, and orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the recipient.

[8.314.2.15 NMAC - Rp, 8 NMAC 4.MAD.733.6, 8-1-06]

8.314.2.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:

All medicaid services are subject to utilization review for medical necessity and program compliance. Reviews by MAD or its designee may be performed before services are furnished, after services are furnished, before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, D&E waiver providers receive instructions and documentation forms necessary for prior approval and claims processing.

A. Prior authorization:

To be eligible for D&E waiver services, recipients must meet the level of care (LOC) requirements for services provided in a nursing facility (NF). LOC determinations are made by MAD or its designee. The ISP must specify the type, amount and duration of services. All services specified in the ISP require prior authorization from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. Eligibility determination:

Prior authorization of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid and D&E waiver services or other health insurance prior to the time services are furnished. Recipients may not be institutionalized, or hospitalized, or receive medicaid personal care option services or other HCBS waiver services at the time D&E waiver services are provided, except for case management services that are required to coordinate the transition of services to D&E waiver services. See 8.290.400.10 NMAC, *Basis for Defining the Group*.

C. Reconsideration:

Providers who disagree with the denial of a prior authorization request or other review decisions may request a re-review and reconsideration. See 8.350.2 NMAC, *Reconsideration Of Utilization Review Decisions*.

[8.314.2.16 NMAC - Rp, 8 NMAC 4.MAD.733.7, 8-1-06]

8.314.2.17 REIMBURSEMENT:

Waiver service providers must submit claims for reimbursement to the MAD medicaid management information system (MMIS) for processing. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, agencies receive instructions on documentation, billing, and claims processing. Claims must be filed per the billing instructions in the medicaid policy manual. Providers must follow all medicaid billing instructions. See 8.302.2 NMAC, *Billing For Medicaid Services*. Reimbursement to providers of waiver services is made at a predetermined reimbursement rate.

[8.314.2.17 NMAC - Rp, 8 NMAC 4.MAD.733.8, 8-1-06]

HISTORY OF 8.314.2 NMAC:

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

ISD-Rule 310.2000, Coordinated Community In-Home Care Services, 3/19/84.

History of Repealed Material:

ISD-Rule 310.2000, Coordinated Community In-Home Care Services, Repealed 1/18/95.

8 NMAC 4.MAD.736.12 - Repealed 9/1/98; and

8 NMAC 4.MAD.736.412 - Repealed 9/1/98.

8 NMAC 4.MAD.733, Disabled and Elderly Home and Community-Based Services Waiver, filed 1/10/97 - Repealed effective 8/1/2006.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.232.400 NMAC, Sections 5 and 9, which will be effective on August 1, 2006. The Medical Assistance Division amended the section to add children ages 0-6 into Category 032.

8.232.400.5 EFFECTIVE DATE:
 February 1, 1995, unless a later date is cited at the end of a section.

[2-1-95; 8.232. 400.5 NMAC – Rn, 8 NMAC 4.KID.000.5, 7-1-01; A, 8-1-06]

8.232.400.9 MEDICAID COVERAGE FOR CHILDREN - CATEGORY 032: Applicants/recipients who meet certain age, income and other non-financial requirements can be eligible for category 032.

A. Basis for defining the group: Effective April 1, 1995, applicants/recipients who were born after March 31, 1976 and are under nineteen (19) years of age may be eligible for medicaid if the countable income of the assistance unit of which the applicant/recipient is a member is less than 185% of the federal income poverty guidelines for the size of the assistance unit. Effective March 1, 1999, children under nineteen (19) years of age may be eligible for medicaid under the state children's health insurance program (SCHIP), if the countable income of the assistance unit is between 185-235% of the federal income poverty guidelines for the size of the assistance unit. Effective August 1, 2006, children under six (6) years of age may be eligible through the application of more liberal income and child care disregards.

B. Assistance units: Families can choose to include or exclude children in the household unit for purposes of determining category 032 eligibility. If a family elects to exclude a particular child and the child's income, the child must also be excluded when determining the standard of need for the remaining household members. Parents and spouses must be included in the assistance unit if they reside in the household with the child. The needs and income of any unborn child are included when determining the standard of need as if the child were born and a member of the assistance unit.

C. Living arrangements:
 (1) A child is not required to live with a specified relative to receive category 032. Children in the following substitute care arrangements are eligible to receive category 032 on the factor of living arrangements:

- (a) foster homes;
- (b) accredited and non-accredited

residential treatment centers;

- (c) group homes;
- (d) treatment foster care;
- (e) free-standing psychiatric hospitals;

(2) For purposes of medicaid eligibility, a child who is placed in a detention center ceases to be considered temporarily absent once the stay exceeds 60 days, or until the dispositional hearing, whichever first occurs.

(3) A child who leaves an assistance unit which includes his or her parents to enter an allowable substitute care arrangement is still considered a member of that assistance unit for the month of entry into substitute care. The income of the parent(s), minus any allowable deductions and/or disregards, is considered available to the child for that month. The child is considered an assistance unit of one (1) person beginning with the first day of the month following the month of admission. His or her needs are removed from the eligibility computation for the original assistance unit and the income of the parent(s) is no longer considered available to the child.

(4) If a child is in the custody of the children, youth and families department (CYFD) or another recognized child-placement agency, at the time he or she is placed in an allowable substitute care arrangement, the child is considered an assistance unit of one (1) person beginning with the month of placement. Verification of the child's custody status must be supplied by CYFD or any other agency which has been awarded custody of the child. Application for category 032 on behalf of the child is made by an authorized employee of the custodial agency.

(5) If a child is not living with the parent(s) the month of placement in an allowable substitute care arrangement and has been either living with relatives for the previous sixty (60) days, is homeless or the whereabouts of the parent(s) are unknown, the child is considered an assistance unit of one (1) person beginning with the month of substitute care placement.

(6) A child who is an inmate of a public institution is not eligible for category 032. A public institution is an institution which is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. [42 CFR Section 435.1009]

(7) Examples of public institutions include jails, detention centers, diagnostic holding centers, the New Mexico boys and girls schools, "wilderness camps" or halfway houses and reintegration centers which are not certified to furnish medical care.

(8) A child placed in a *diagnostic holding facility* for a period of up to thirty (30) days for diagnostic purposes is not con-

sidered an inmate of a public institution. Placement for this reason is verified by a copy of the order for "Interim Temporary Commitment for Evaluation and Diagnosis." [42 CFR Section 435.1009, 32A-2-17 NMSA 1978 (Repl. 1992)]

(9) A child living in a correctional facility or under the jurisdiction of the correctional system is not eligible for category 032. For example, a child who is released for a day or a week and who has to report back to the facility for incarceration at night or on weekends is not eligible for category 032.

(10) A child in probation or parole status, or with a suspended sentence, may qualify, if otherwise eligible, as long as that status is not revoked.

(11) A child transferred from a public institution to an acute medical facility for short-term treatment is still considered an inmate of a public institution and is not eligible for category 032. A child transferred from a public institution to a psychiatric hospital, residential treatment center, group home or treatment foster care arrangement for long-term medical treatment is eligible for category 032 if he or she has been permanently released from the correctional facility by court order and is not expected to return.

(12) Additional policy regarding children in residential treatment centers (RTCs): A child in need of RTC services may be placed in either an accredited or a non-accredited facility. Both types of RTCs are required to develop a treatment plan for the child within fourteen (14) days of his/her admission to the facility. In some instances, the treatment plan may provide for the child to receive therapeutic leave for several days at a time. An otherwise eligible child who is absent from an RTC pursuant to provisions of his/her treatment plan retains medicaid eligibility during the absence. A child loses medicaid eligibility as a household of one based on residence in an RTC when either of the following circumstances occurs:

(a) the child is discharged from the RTC upon completion of the treatment plan; or

(b) the child has been absent from the RTC for thirty (30) consecutive days.

[2-1-95; 4-1-95; 8-15-95; 4-30-96; 3-1-99; 8.232.400.9 NMAC – Rn, 8 NMAC 4.KID.400, 402, 7-1-01; A, 8-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.232.600 NMAC, Sections 5, and 13, which will be effective on August 1, 2006. The Medical Assistance Division amended the section to explain the retroactive benefit coverage when adding

children ages 0-6 into Category 032.

8.232.600.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section. [2/1/95; 8.232.600.5 NMAC - Rn, 8 NMAC 4.KID.000.5, 7/1/04; A, 8-1-06]

8.232.600.13 RETROACTIVE BENEFIT COVERAGE: Up to three (3) months of retroactive medicaid coverage can be furnished to applicants/recipients who have received medicaid-covered services during the retroactive period and would have met applicable eligibility criteria had they applied during the three (3) months prior to the month of application [42 CFR Section 435.914] Retroactive medicaid for children 0 - 5 years of age applying the \$750 earned income disregard or child care deduction in Paragraph (3) of Subsection A of 8.232.500.12 NMAC cannot be approved prior to August 1, 2006.

A. Application for retroactive benefit coverage: Application for retroactive medicaid can be made by checking "yes" to the question "does anyone in your household have unpaid medical expenses in the last three (3) months?" on the application for assistance (ISD 100 S) form or by checking "yes" to the question "does anyone have any unpaid medical bills from the past three months?" on the application for medical assistance for children and pregnant women (MAD 023) form. Applications for retroactive medicaid benefits must be made no later than 180 days from the date of application for assistance. Medicaid-covered services which were furnished more than two (2) years prior to application are not covered.

B. Approval requirements: To establish retroactive eligibility, the income support division worker must verify that all conditions of eligibility were met for each of the three (3) retroactive months and that the applicant received medicaid-covered services. Each month must be approved or denied on its own merits. Retroactive eligibility can be approved on either the ISD2 system or on the retroactive medicaid eligibility authorization (ISD 333) form.

C. Notice:

(1) **Notice to applicant:** The income support division worker must inform the applicant if any of the retroactive months are denied.

(2) **Recipient responsibility to notify provider:** After the retroactive eligibility has been established, the income support division worker must notify the recipient that he/she is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient does not inform all providers and furnish verification of eligibility which can

be used for billing and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the recipient is responsible for payment of the bill. [2/1/95; 4/1/95; 7/1/95; 8.232.600.13 NMAC - Rn, 8 NMAC 4.KID.625 & A, 7/1/04; A, 8-1-06]

NEW MEXICO STATE MINE INSPECTOR

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 8 MINE SAFETY PART 2 E M E R G E N C Y NOTIFICATION

11.8.2.1 ISSUING AGENCY: New Mexico State Mine Inspector. [11.8.2.1 NMAC - N, 08/31/06]

11.8.2.2 SCOPE: All persons subject to NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq. [11.8.2.2 NMAC - N, 08/31/06]

11.8.2.3 STATUTORY AUTHORITY: NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq. [11.8.2.3 NMAC - N, 08/31/06]

11.8.2.4 DURATION: Permanent. [11.8.2.4 NMAC - N, 08/31/06]

11.8.2.5 EFFECTIVE DATE: August 31, 2006, unless a later date is cited at the end of a section. [11.8.2.5 NMAC - N, 08/31/06]

11.8.2.6 OBJECTIVE: The objective of Part 2 of 11.8 NMAC is to establish regulations to implement the requirements for emergency notification plans, mine accident emergency operations center and accident notifications as directed in NMSA Chapter 69, Article 5. [11.8.2.6 NMAC - N, 08/31/06]

11.8.2.7 DEFINITIONS: As used in this part, "accident" has the meaning provided in Title 30 Code of Federal Regulations 50.2. [11.8.2.7 NMAC - N, 08/31/06]

11.8.2.8 REQUIREMENT TO FILE EMERGENCY NOTIFICATION PLAN:

A. All operators of existing mines must prepare an emergency notification plan and submit the plan to the state mine inspector for approval by April 10, 2006. All operators of new or reopened mines shall submit an emergency notification plan to the state mine inspector prior to

opening or reopening the mine.

B. Each emergency notification plan must contain procedures for notifying the state mine inspector within thirty minutes of an accident.

C. Any changes made by a mine operator to an approved emergency notification plan shall be submitted by the operator, within no less than seven working days from date of the change, to the state mine inspector for review and approval. The inspector shall no less than annually, from the date of approval of an operator's emergency notification plan, notify the operator to insure that the plan on file with the state mine inspector is current.

D. The inspector shall retain a copy of each mine operator's approved emergency notification plan at the mine accident emergency operations center. [11.8.2.8 NMAC - N, 08/31/06]

11.8.2.9 ESTABLISHMENT OF MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. The state mine inspector shall establish and maintain the mine accident emergency operations center as the primary state government communications for dealing with mine accidents that:

(1) provides emergency assistance requested by the mine operator or the mine safety and health administration for mine accidents or emergencies; and

(2) is accessible twenty-four hours a day, seven days a week, at a statewide telephone number established and designated by the inspector.

B. Upon receipt of an emergency call regarding an accident, the mine accident emergency operations center shall immediately notify the state mine inspector or his/her designee, who will ensure that the emergency notification plan for the appropriate mine is complied with.

C. In the event of an accident or recovery operation in or about a mine, the state mine inspector may, upon request of the mine operator or the mine safety and health administration, coordinate the assignment of mine rescue teams to assist with needed rescues. [11.8.2.9 NMAC - N, 08/31/06]

11.8.2.10 REQUIREMENTS TO NOTIFY THE MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice within thirty minutes of ascertaining the occurrence of the accident to the mine accident emergency operations center at the statewide telephone number established by the state mine inspector stating the facts and circumstances of the

accident and providing the names and telephone numbers of at least two persons located at the site of the accident who are knowledgeable in emergency operations.

B. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law. Notification of any other federal, state or local agency does not relieve the operator of its obligation to provide notification under Subsection A of 11.8.2.10 NMAC. [11.8.2.10 NMAC - N, 08/31/06]

11.8.2.11 FAILURE TO PROVIDE TIMELY NOTICE:

A. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of a mine if it is determined that the operator failed to give immediate notice as required in 11.8.10 NMAC. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

B. If the state mine inspector determines that notice was not timely provided, the inspector shall within 90 days after notification of an accident or, if notice was not provided to the inspector, after ascertaining that an accident did occur at a mine, mail a notice of violation with a proposed penalty to the operator.

(1) The operator shall pay the penalty within 30 days after receipt of the notice.

(2) If the operator wishes to challenge the violation or request that the penalty be adjusted or waived, the operator must submit a written petition to the inspector within 20 days after receipt of the notice. Filing of a petition stays the requirement to pay the penalty. The operator may also submit written documentation in support of his petition and may request a meeting with the inspector to discuss the circumstances of the violation.

(3) Within 60 days after receipt of a petition, the inspector shall issue a final decision upholding, amending or rescinding the notice of violation and penalty. If the final decision contains a penalty, the operator shall pay the penalty within 30 days after receipt of the notice.

C. In determining the amount of the penalty, the inspector shall consider all relevant factors including whether notice was provided at all to the inspector or, if notice was provided, the lateness of such notice and the seriousness of the accident. The inspector shall, in consultation with the mine safety advisory board, issue guidelines for assessing penalty amounts.

D. In determining whether

to waive imposition of the penalty, the inspector may consider factors such as, but not limited to:

(1) whether the mine was idled for any reason at the time of the accident;

(2) whether the mine operator encountered communications problems that made it impossible to provide timely notice;

(3) whether medical personnel determined that an injury was not considered life threatening immediately after an accident. If injury becomes life threatening, then notice requirements would be triggered when operator learns of a change in status from a medical authority;

(4) whether a fatality of mine personnel that occurs after an accident is associated with a specific accident; and

(5) whether the need to provide emergency medical treatment or emergency rescue and recovery efforts reasonably precluded the mine operator from timely providing notice.

[11.8.2.11 NMAC - N, 08/31/06]

HISTORY of 11.8.2 NMAC:
[RESERVED]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.14.8.28 NMAC, effective July 31, 2006.

13.14.8.28 ACCESS AND ENTRY ENDORSEMENT: The access and entry endorsement, NM form [80] 67, may be attached to all owner's policies and loan policies, including leasehold policies and/or construction loan policies, for all properties except one to four family residential properties, provided the premium in 13.14.10.49 NMAC is paid and a satisfactory survey is furnished showing that there is vehicular and pedestrian access to the abutting existing public street, road or highway. A separate endorsement is to be issued for each public street, road or highway for which the insured wants access and entry coverage and a separate premium as provided for in 13.14.10.49 NMAC is to be paid for each endorsement issued. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO BOARD OF
EXAMINERS FOR
ARCHITECTS****New Mexico Board of Examiners for
Architects**

PO Box 509
Santa Fe, NM
505-827-6375

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, August 18, 2006. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

**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.