

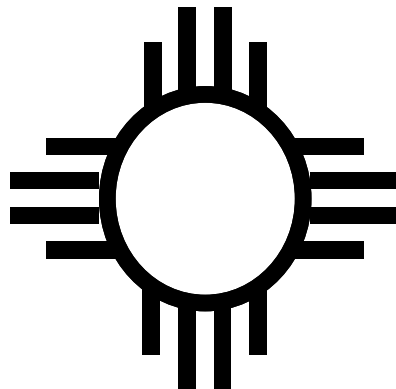
**NEW
MEXICO
REGISTER**



Volume XVII
Issue Number 18
September 29, 2006

New Mexico Register

**Volume XVII, Issue Number 18
September 29, 2006**



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

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Santa Fe, New Mexico
2006

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New Mexico Register

Volume XVII, Number 18

September 29, 2006

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE AND ADMINISTRATIVE CENTER

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE & ADMINISTRATIVE CENTER

NOTICE OF MEETING AND PUBLIC HEARING ON AMENDMENT OF RULES

Tuesday October 17, 2006, 11:00 AM, Criminalistics Conference Room, Metropolitan Forensic Science Center, 5350 2nd Street NW, Albuquerque, NM 87107

To comment on, or for additional information including a copy of the agenda and proposed amendments, or if you have a disability and you require special assistance to participate in this meeting contact John Krebsbach, Chairperson at (505) 823-4630 by Monday October 16, 2006.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
NOTICE OF PUBLIC HEARING TO CONSIDER REPEAL AND REPLACEMENT OF 20.9.2 NMAC, "TIRE RECYCLING" REGULATIONS

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on December 5, 2006 and continuing thereafter as necessary, at the New Mexico State Capitol Building, Room 317, Santa Fe, New Mexico. The hearing location may change prior to December 5, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing is to consider repeal and replacement of the Tire Recycling Regulations, 20.9.2 NMAC. The New Mexico Environment Department is the proponent of the proposed replacement rules.

The replacement rule includes: permitting requirements for tire recycling facilities and civil engineering applications using scrap tires; registration requirements for scrap tire haulers, including bonding requirements; operating requirements for scrap tire generators, scrap tire haulers, tire recycling facilities

and civil engineering applications; provisions for a scrap tire manifest system; siting and design requirements for scrap tire storage; eligibility, criteria and procedures for awarding grants and loans; and applicability and procedures for financial assurance; and all other provisions of the recycling and illegal dumping rules. The replacement rules are for the purpose of implementing the Recycling and Illegal Dumping Act, NMSA 1978 Sections 74-13-1 through 74-13-20.

The proposed rule changes may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. The proposed rule changes can also be found on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us/swb/doc/RAID%20rules%20draft%2008-21-06%20filed.doc> Written comments may be submitted to the EIB regarding the amended and replaced rules at the above address, and should reference docket number EIB 06-08(R).

Please note that formatting and minor technical changes in the rules, other than those proposed by the petitioners may occur. In addition, the Board may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Board and evidence presented at the hearing.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, NMSA 1978, Section 74-1-9, 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. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qual-

ifications of the witness, including a description of their education and work background;

- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on November 20, 2006 and should reference the name of the rules, the date of the hearing, and docket number EIB 06-08(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87505

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., sign language interpreter, to participate in any aspect of this process, please contact the personnel services bureau by November 5, 2006. The personnel services bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

NEW MEXICO GAMING CONTROL BOARD

NEW MEXICO GAMING CONTROL BOARD

NOTICE OF HEARING ON AMENDMENTS TO RULES

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 9:00 a.m. on November 9, 2006, at the New Mexico Gaming Control Board,

4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113 to consider amendments for the following rules: **15.1.5 NMAC**, *Application for Licensure Under the Gaming Control Act*, **15.1.6 NMAC**, *Premises Licensed under the Gaming Control Act*, **15.1.7 NMAC**, *Gaming Machines, New Games and Associated Equipment*, **15.1.8 NMAC**, *Accounting Requirements under the Gaming Control Act*, **15.1.9 NMAC**, *Internal Control Minimum Standards for Gaming Devices under the Gaming Control Act*, **15.1.10 NMAC**, *Conduct of Gaming under the Gaming Control Act*, **15.1.25 NMAC**, *Manufacturer's License Waiver under the Gaming Control Act*.

Copies of the proposed amendments are available on request to the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113, or by calling (505) 841-9733. The proposed changes are also available on our website at www.nmgcb.org. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Denise Leyba, Gaming Control Board, at least one week prior to the hearing at (505) 841-9733.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing for changes to the Food Stamp Program income limits for participation, standards and deductions available to otherwise eligible households, and to the maximum food stamp allotments (Thrifty Food Plan). The Department will also make changes to the NMW Cash Assistance, Education Works, Support Services and General Assistance programs income limits for participation, which are adjusted each year in compliance with the New Mexico Works Act, and are made effective for benefit month October. The hearing will be

held at 9:00 am on Monday, October 30, 2006. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

Each year the Department is required to make changes to the Food Stamp Program income limits for participation, standards and deductions available to otherwise eligible households, and to the maximum food stamp allotments (Thrifty Food Plan). The United States Department of Agriculture, Food and Nutrition Services determine these amounts. The Department received notification of the adjusted amounts on August 2, 2006 and will make the adjustments effective for benefit month October 2006.

The Department will also make changes to the NMW Cash Assistance, Education Works, Support Services and General Assistance programs income limits for participation, which are adjusted each year in compliance with the New Mexico Works Act, and are made effective for benefit month October.

Pursuant to the Human Services Department Act at NMSA 1978, at 9-8-6(F), because the Department has received less than sixty days notice of federal legislation, the Department will implement an interim rule to make effective the federal mandates for the Food Stamp Program, and will also implement the mandated changes to the NMW Cash Assistance, Support Services, General Assistance and Education Works Programs.

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 the public hearing, please contact the Department toll free at 1-800-432-6217, TDD 1-800-609-4TDD (4833), or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling toll free 1-800-432-6217.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348
Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
Ted.Roth@state.nm.us

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

Legal Notice

Notice is hereby given the New Mexico Naprapathic Practice Board that will convene a Rule Hearing in accordance with current NMAC requirements to amend, replace and repeal Title 16, Chapter 6, Parts 1 through 11 for the following rules:

16.6.1 NMAC	General Provisions
16.6.2 NMAC	Code of Conduct
16.6.3 NMAC	Fees
16.6.4 NMAC	License Expiration and Renewal
16.6.5 NMAC	Inactive Status
16.6.6 NMAC	Continuing Education
16.6.7 NMAC	Licensure by Endorsement
16.6.8 NMAC	Practice Procedures
16.6.9 NMAC	Supervision of Interns
16.6.10 NMAC	Naprapathic Assistants
16.6.11 NMAC	Parental Responsibility Act

This Hearing will be held at the State of New Mexico Regulation and Licensing Department, 2550 Cerrillos Rd., Second floor, Santa Fe, NM, on November 16, 2006 at 10:00 a.m.

Following the Rule Hearing the New Mexico Naprapathic Practice Board will convene a regular meeting.

Copies of the proposed rules are available upon request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-4604.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by November 6, 2006 to allow time for distribution to the Board members. Individuals planning on testifying at the hearing must provide copies of their testimony also by November 6, 2006.

Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board office at (505) 476-4600, no later than November 6, 2006.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on November 1, 2006, from 10:00 a.m. to 12:00 p.m.. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.20.2 NMAC	GOVERNING BUDGETING AND ACCOUNTING FOR NEW MEXICO PUBLIC SCHOOLS AND SCHOOL DISTRICTS	Amend rule to change State Board of Education to Public Education Department and amend sections 17 and 23 to clarify procedures for contracting and payment of legal fees

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Ms. Mary Deets-Jimenez, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (mary.deets-jimenez@state.nm.us) (505) 827-6641 (telefax (505) 827-6681). Information regarding the exact time and location of the auxiliary hearing will be posted on the Public Education Department's website (<http://ped.state.nm.us/>) at least thirty days prior to the hearing.

Written comments must be received no later than 5:00 pm on November 1, 2006. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking actions may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Mary Deets-Jimenez, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (mary.deets-jimenez@state.nm.us) (505) 827-6641(telefax (505) 827-6681). The proposed rules will be made available at least thirty days prior to the hearings.

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

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on November 1, 2006, from 2 p.m. to 4:00 p.m.. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.30.8 NMAC	DISTANCE LEARNING	Adopt new rule to establish requirements for distance learning programs taken for credit by students enrolled in a school district.

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Ms. Mary Deets-Jimenez, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (mary.deets-jimenez@state.nm.us) (505) 827-6641 (telefax (505) 827-6681). Information regarding the exact time and location of the auxiliary hearing will be posted on the Public Education Department's website (<http://ped.state.nm.us/>) at least thirty days prior to the hearing.

Written comments must be received no later than 5:00 pm on November 1, 2006. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking actions may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Mary Deets-Jimenez, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (mary.deets-jimenez@state.nm.us) (505) 827-6641)(telefax (505) 827-6681). The proposed rules will be made available at least thirty days prior to the hearings.

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

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, from 1:30 p.m. – 3:30 p.m. on October 30, 2006 to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.75.4 NMAC (Proposed NMAC No.)	Relating to the Implementation of the Braille Access Act (Proposed Part Name)	Adopt New rule

The Department proposes to promulgate a new rule to implement the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] and to adopt the National Instructional Materials Accessibility Standard required by the Individuals with Disabilities Education Improvement Act of 2004 [20 U.S.C. § 1412(a)(23)] regarding providing instructional materials to blind persons or other persons with print disabilities in a timely manner.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking to Gilbert Perea, Assistant Secretary, Program Support and Student Transportation Division, Instructional Materials Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (gilbert.perea@state.nm.us) (505) 827-6640 (telefax (505) 827-5802). Written comments must be received no later than 5:00 pm on October 30, 2006.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Angela Aguilar, Instructional Materials Bureau, Public Education Department, 300 Don Gaspar, Room G12A; Santa Fe, NM 87501 (angela.aguilar@state.nm.us) (505) 827-6415 (telefax (505) 827-6411).

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Aguilar at (505) 827-6415 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**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,
Petitioner.

Docket No.
06-00145-TR-M

SECOND 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 Second Amended Notice of Proposed Rulemaking (“Second 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 amend-

ed 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.

On July 18, 2006, the Commission issued an Amended Notice of Proposed Rulemaking ("First Amended NOPR") in which it re-opened the period to submit comments regarding the proposed rule amendment and scheduled an additional public comment hearing. The First Amended NOPR allowed interested persons to submit written comments no later than August 7, 2006 and written response by August 11, 2006. It also ordered a further public comment hearing to be held on September 6, 2006.

At the September 6, 2006 hearing, the Commission's Transportation Division Staff indicated that it was working on a proposed definition of the term "incidental carrier" for inclusion in the amendment to the rule. In light of this representation by the Staff, the Commission's Hearing Examiner conducting the September 6 hearing noted that the record in this matter would remain open.

After researching the scope of the categories of entities that could be "incidental carriers" as that term is defined in NMSA 1978, Section 65-2A-3.S (2005) and researching the number of entities that may fall into those categories, and that therefore could be subject to the incidental carrier law, Staff believes that there may be thousands of such entities in the State of New Mexico. Staff believes that the rule should contain a definition of "incidental carrier" that limits application of the rule to the specific categories stated in its proposed definition, so that the rule can be phased in to apply to all incidental carriers as Commission resources allow. Accordingly, Staff proposes that a new definition, K, be added to 18.3.1.7 NMAC as follows, and that the remaining Subsections of 18.3.1.7 NMAC be re-lettered accordingly:

K. incidental carrier means a motor carrier of persons that provides any of the following types of service as its primary service: boating, river rafting, kayaking, canoeing, cycling, hiking, bird watching, camping, fishing, or hunting.

In order to permit comments with respect to the foregoing proposed definition of the term "incidental carrier," the Commission has determined that a further comment period should be allowed, during which any interested person may submit comments regarding the proposed amendments to the rule; interested persons may also file written reply comments to such comments; and interested persons may make comments orally at another public comment hearing.

Therefore, the period to submit written comments regarding the proposed amendment is hereby re-opened. Any person wishing to comment on the proposed amendments may do so by submitting written comments no later than October 20, 2006, and any person wishing to respond to such comments may do so by submitting written response comments no later than October 27, 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 comments regarding the proposed amended rule. The additional public hearing shall be held on October 30, 2006 at 10:00 a.m. at the offices of the Public

Regulation Commission, PERA Building, 4th Floor Hearing Room, 1120 Paseo del Peralta, Santa Fe, NM 87501.

Persons interested in attending the additional public comment hearing should contact the Commission at the telephone number listed above to confirm the date, time and place of the 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 October 30, 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 an amended rule in this matter will be sent, along with copies of the particular rule as amended, to commenters 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 14th day of September, 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 PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

BEFORE THE NEW
MEXICO PUBLIC
REGULATION
COMMISSION

Case No.
06-00241-UT

IN THE MATTER OF
AN INQUIRY
INTO THE PROVISION
OF NET METERING
SERVICES BY
ELECTRIC UTILITIES

NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") on the status report of the Utility Division Staff ("Staff") to the Commission on the outcome of the workshop conducted by the Hearing Examiner on July 7, 2006, on the Commission's rules concerning the provision of net metering services by electric utilities. Being advised in the premises,

**THE COMMISSION FINDS
AND CONCLUDES:**

1. Commission rules currently authorize the provision of net metering services by electric utilities to qualifying facilities ("QFs") as defined by federal law. See 17.9.570.1 NMAC et seq., especially 17.9.570.10(C) NMAC, and 17.9.571.1 NMAC et seq.

2. The Commission issued 17.9.570.1 NMAC et seq. in order, among other things, to implement Federal Energy Regulatory Commission ("FERC") regulations related to its implementation of the Public Utility Regulatory Policies Act ("PURPA") of 1978. 17.9.570.6 NMAC (Objective).

3. Congress' express purposes in enacting PURPA's retail regulatory policies for electric utilities were three-fold: "(1) conservation of energy supplied by electric utilities, (2) the optimization of the efficiency of use of facilities and resources by electric utilities; and (3) equitable rates to electric consumers." Public Utility Regulatory Policies Act of 1978, PL 95-617 (HR 4018), Section 101, November 9, 1978, codified at 16 U.S.C.A. § 2611.

4. 17.9.570 NMAC, Governing Cogeneration and Small Power Production, describes the net metering option as follows: "The utility shall install

an additional meter to measure separately the energy generated by the qualifying facility and then calculate net energy consumed or supplied by the qualifying facility. The qualifying facility shall be paid for energy supplied above the amount consumed at the utility's energy rate. ..." 17.9.570.10(C) NMAC.

5. In addition, the Commission adopted 17.9.571 NMAC, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller, "to simplify the interconnection requirements for Qualifying Facilities of 10 kW or smaller and encourage the use of small-scale customer-owned renewable or alternative energy resources ... [,]" and to otherwise supplement 17.9.570 NMAC. 17.9.571(6) and 17.9.571(9) NMAC. Among other things, 17.9.571 NMAC simplifies the interconnection requirements for the smaller QFs. See, for example, 17.9.571.10(D) and (E) NMAC.

6. 17.9.571 NMAC authorizes the use of a single, bidirectional meter and provides that, in calculating net-metered bills, utilities will bill customers for electricity supplied by the utility in excess of the electricity generated by the customer during the billing period at the retail rate. 17.9.571.11(A) and (B) NMAC. For 10 kW or smaller facilities, the utility may either pay or credit the customer for the net kilowatt-hours of energy supplied to the utility; the utility will carry credits forward month to month, to be paid when the customer leaves the system at the utility's energy rate. 17.9.571.11(C)(2) NMAC.

7. Finally, the Energy Policy Act of 2005 ("EPAct 2005") amended PURPA to include a net metering standard that state regulatory authorities must consider whether or not to implement in order to achieve PURPA's standards or whether to adopt another standard instead. 16 U.S.C.A. § 2621(a)-(c). EPAct 2005 defines "net metering" as a "service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility ... during the applicable billing period." 16 U.S.C.A. § 2621(d).

8. In order to develop rules on the provision of net metering services by electric utilities, the Commission held a workshop on July 7, 2006. At that workshop, parties were requested to address the following issues:

(a) Who are the electric customers, if any, with generating

capabilities who are excluded from net metering services under Commission Rules 570 and 571, but who would nevertheless benefit from such services?

(b) Would the provision of net metering services to any excluded customers or customer groups advance the objectives of the federal PURPA? If so, how would it do so?

(c) Would extending the coverage of net metering services facilitate the utilities' compliance with PURPA? If so, how would it do so?

(d) Would extending the coverage affect non-eligible customer groups in any way and, if so, how?

(e) Are the simplified interconnection procedures found in 17.9.571 NMAC appropriate for facilities larger than 10 kW and, if so, why should the capacity be increased? If increased, should the Commission set a new maximum capacity for these streamlined interconnection requirements? Would this outer limit be 50 kW, 100 kW, 500 kW, 1 MW, 2 MW, or other specified limit and why would such a specified limit be advisable?

(f) Loads above 50 kW typically have demand charges. Should the proposed rule or rules address demand measurements, charges and credits and, if so, how should these issues be addressed?

(g) What are the metering problems or issues, if any, that should be addressed in the revision of net metering programs?

(h) Are single phase and three phase issues addressed adequately? If not, what else needs to be done?

(i) What are the interconnection standards, if any, that the Commission should consider within this Notice of Inquiry?

(j) What are the other enhancements, if any, which the Commission should consider in order to better fulfill the purposes of PURPA?

9. The Staff presented a proposed rule to the Commission as part of its status report as required by the Notice of Inquiry issued by the Commission in this Case on June 27, 2006. The rule presented by Staff represents an amendment to 17.9.570 NMAC which would extend net metering to qualifying facilities up to 80 MW in capacity. The proposed rule presented by Staff is attached to this Notice of Proposed Rulemaking as Exhibit 1.

10. The Notice of Inquiry contemplated that interested persons would submit their written comments on Staff's Status Report and any proposed rules by November 14, 2006. However, in light of

the requirements of the EPAct of 2005, the Commission should revise the comment schedule such that this rulemaking will be completed before the end of 2006. Therefore, interested persons should submit their written comment on the proposed rules by September 28, 2006, and response comments should be submitted by October 13, 2006. Comments suggesting changes to the proposed rule 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 proposed rule shall be in legislative format. Any proposed changes to the proposed rule shall be submitted in hard copy. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

11. Persons making written comments in this case should file the original plus fourteen copies of their filings with the Commission's Records Department, First Floor, Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico 87501. All filings should be posted on the Commission's website at www.nmprc.state.nm.us, at Public Notices, under the above-captioned case number.

12. The Commission should hold a public comment hearing at 9:30 a.m. on November 15, 2006, in the 4th Floor Hearing Room in the PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87504.

13. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

14. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

15. 1.2.3.7(B) NMAC ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be November 20, 2006. The setting of that

record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

16. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the proposed rule shall be filed by September 28, 2006, and response comments must be filed by October 13, 2006.

C. The record in this case, for purposes of 17.2.3.7(B) NMAC ("Ex Parte Communications") shall be closed at 5:00 p.m. on November 20, 2006.

D. A public comment hearing shall be held as provided in this Notice of Proposed Rulemaking.

E. A copy of this Notice, including Exhibit 1, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibit 1, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

F. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 7th day of September 2006.

NEW MEXICO PUBLIC REGULATION
COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

BEFORE THE NEW
MEXICO PUBLIC
REGULATION
COMMISSION

IN THE MATTER
OF THE NOTICE OF
PROPOSED
RULEMAKING TO
AMEND
UTILITY DIVISION
PROCEDURAL
RULE 17.1.2.23 NMAC
PERTAINING Case No.
TO STIPULATIONS 06-00359-UT

NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Commission's own motion. Being advised in the premises,

THE COMMISSION FINDS
AND CONCLUDES:

1. Under current procedural rules, the only testimony that is certain to be in the record of a docketed case that proceeds to a stipulation (aside from the testimony in support of that stipulation), is the direct testimony of the party bringing the case; e.g., an applicant or petitioning party. In a common scenario, the applicant or petitioning party is a regulated utility, which files its direct testimony to begin the case. Current procedural rules place no special requirements on Staff to file its direct testimony prior to entering into a stipulation resolving such a docketed case.

2. Requiring staff to file its direct testimony prior to entering into a stipulated settlement would provide the Commission with a better basis on which to evaluate stipulations by knowing Staff's position in the absence of a stipulation, and the bases for that position.

3. The Commission should consider amendments to the Utility Division Procedural Rule concerning stipulations, 17.1.2.23 NMAC, which would require Staff of the Commission to file its

direct testimony prior to entering into a stipulation resolving a docketed case, and which would make inadmissible testimony in support of a stipulation in the event the Commission rejected such a stipulation.

4. The Commission should issue as a proposed rule the amendments shown in Exhibit 1 to this Notice of Proposed Rulemaking.

5. The Commission will accept written comments on the rule contained in Exhibit 1 and proposed in this Notice of Proposed Rulemaking from any interested person.

6. Interested persons shall file their written comments on the proposed rules no later than September 26, 2006. Any response comments shall be filed no later than October 17, 2006. Comments suggesting changes to the proposed rules 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 proposed rules shall be in legislative format. Any proposed changes to the proposed rules shall be submitted in hard copy. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

7. Written comments or written response comments shall be sent to: Melanie Sandoval
New Mexico Public Regulation Commission
Attention: Case No. 06-00065-UT
224 East Palace Avenue, Marian Hall
Santa Fe, NM 87501
Telephone: (505) 827-6968

8. Copies of the proposed rules may be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Meetings," then "Public Notices."

9. The Commission will review all timely submitted written comments and will hold public comment hearings on the following dates and at the following times and places:

Monday, November 1, 2006
Hearing Room, 4th Floor
2-4 p.m., PERA Bldg.
1120 Paseo de Peralta
Santa Fe, New Mexico

10. Interested persons should contact the Commission to confirm the date, time and place of any public hear-

ing because hearings are occasionally rescheduled.

11. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

12. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be December 5, 2006. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

13. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the proposed rule must be filed by September 26, 2006, and response comments must be filed by October 17, 2006.

C. The record in this case, for purposes of 17.2.3.7(B) NMAC ("Ex Parte Communications") shall be closed at 5:00 p.m. on December 5, 2006.

D. A public comment hearing shall be held as provided in this Notice of Proposed Rulemaking.

E. A copy of this Notice, including Exhibit 1, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibit 1, shall be published in two newspapers of general circulation in the State and in the New Mexico Register. The Commission shall provide the Notice by e-mail or fac-

simile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

F. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on this 5th day of September 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

**NEW MEXICO RETIREE
HEALTH CARE
AUTHORITY**

**NEW MEXICO RETIREE HEALTH
CARE AUTHORITY NOTICE OF
PUBLIC HEARING AND RULE
MAKING NOTICE**

On Thursday, October 26, 2006, beginning at 2:00 p.m. at the Rio Rancho City Hall Chambers, 3900 Southern Blvd., Rio Rancho, NM 87124, the New Mexico Retiree Health Care Authority will be holding a public hearing for comment on a proposed Rule change. The proposed rule change will put into place an actuarially sound tool for the calculation of assessing an eligible, petitioning organization seeking entry into the Authority. The assessment will place a pro-rata value on the liability associated with projected retiree benefits based on pre-retirement service which has already been earned prior to the groups proposed entrance date and commencement of contributions to the Retiree Health Care Authority. A calculation is currently in the Rules that has been deemed actuarially unsound by the agency's actuary. The proposed change will amend the following rule: 2.81.10.8 SURPLUS AMOUNT CONTRIBUTION.

The proposed changes are open for public comment and consideration by the hearing officer. Public comment received will then be taken to the next Board of Directors meeting and presented for consideration by the Board.

A copy of the agenda or any of the affected rules can be obtained from the Executive Director, New Mexico Retiree Health Care Authority, 4308 Carlisle NE, Suite 104, Albuquerque, NM 87107 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Executive Director's Office at (505) 222-6416, or the Department's website at www.nmrhca.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Tracie Davis at (505) 222-6422. Please contact Ms. Davis at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Ms. Davis if a summary or other type of accessible form is needed.

**End of Notices and
Proposed Rules Section**

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Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.44 NMAC, Section 8, effective 09/29/2006.

21.17.44.8 ASSESSMENT:

A. The committee assessment rate is set forth at [~~12 dollars (\$12)~~] 6 dollars (\$6) per land acre of irrigated cotton and [~~5 dollars (\$5)~~] 3 dollars (\$3) per land acre for dryland cotton to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of the assessment.

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

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent. Any cotton acreage is subject to verification by the control committee.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed up to a rate of 18 percent per annum or 1 1/2 percent per month on the balance unpaid after 30 days.

[21.17.44.8 NMAC - N, 06/29/2001; A, 09/29/2006]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.102.500 NMAC, Section 8, effective 10/01/06

8.102.500.8 GENERAL REQUIREMENTS:

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

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

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

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

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

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

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

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

(a) one person [~~\$ 679~~] \$ 695

(b) two persons [~~\$ 940~~] \$ 935

(c) three persons [~~\$1,140~~] \$1,177

(d) four persons [~~\$1,372~~] \$1,417

(e) five persons [~~\$1,603~~] \$1,658

(f) six persons [~~\$1,833~~] \$1,899

(g) seven persons [~~\$2,064~~] \$2,140

(h) eight persons [~~\$2,295~~] \$2,380

[~~(i) nine persons \$2,527~~]

[~~(j) ten persons \$2,759~~]

[~~(k) for more than ten persons, (i) add \$ 232~~] \$242 for each additional person.

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

(1) one person [~~\$ 798~~] \$ 817

(2) two persons [~~\$1,070~~] \$1,100

(3) three persons [~~\$1,341~~] \$1,384

(4) four persons [~~\$1,613~~] \$1,667

(5) five persons [~~\$1,885~~] \$1,950

(6) six persons [~~\$2,156~~] \$2,234

(7) seven persons [~~\$2,428~~] \$2,517

(8) eight persons [~~\$2,700~~] \$2,800

[~~(9) nine persons \$2,972~~]

[~~(10) ten persons \$3,244~~]

[~~(11) for more than ten persons, (9) add \$ 272~~] \$284 for each additional person.

D. Standard of need:

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

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

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

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

(a) one person \$ 231

(b) two persons \$ 310

(c) three persons \$ 389

(d) four persons \$ 469

(e) five persons \$ 548

(f) six persons \$ 627

(g) seven persons \$ 706

(h) eight persons \$ 802

[~~(i) nine persons \$ 881~~]

[~~(j) ten persons \$ 960~~]

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

E. Special needs:

(1) **Special clothing allowance:** In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the month of

August only.

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

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

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

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

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

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

This is an emergency amendment to 8.106.500 NMAC, section 8, effective 10/01/06

8.106.500.8 GA - GENERAL REQUIREMENTS:

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

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

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

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

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

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

(1) Income eligibility limits are

revised and adjusted each year in October.

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

- (a) one person [~~\$ 679~~] \$ 695
- (b) two persons [~~\$ 910~~] \$ 935
- (c) three persons [~~\$ 1,140~~] \$1,177
- (d) four persons [~~\$ 1,372~~] \$1,417
- (e) five persons [~~\$ 1,603~~] \$1,658
- (f) six persons [~~\$ 1,833~~] \$1,899
- (g) seven persons [~~\$ 2,064~~] \$2,140
- (h) eight persons [~~\$ 2,295~~] \$2,380
- [~~(i) nine persons \$ 2,527~~]
- [~~(j) ten persons \$ 2,759~~]

[~~(k) for more than ten persons;~~ (i) add [~~\$ 232~~] \$242 for each additional person.

D. Standard of need:

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

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

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

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

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

[~~(k) for more than 10 persons;~~ (i) add \$79 for each additional person.

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

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

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

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

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

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

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

This is an emergency amendment to 8.139.500 NMAC, Section 8, effective 10/01/06

8.139.500.8 BASIS OF ISSUANCE

A. Income standards: Determination of need in the food stamp program is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is 130 percent (130%) of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent (130%) of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 states and the District of Columbia.

E. Issuance table: The issuance table lists applicable income guidelines used to determine food stamp (FS) eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for FS benefits must have income below the appropriate gross income limit for household size.

Household Size

Household Size	Maximum Gross Monthly Income Elderly/Disabled Separate Status at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	[\$1,316] \$1,348	[\$1,037] \$1,062	[\$798] \$ 817	[\$152] \$155
2	[\$1,765] \$1,815	[\$1,390] \$1,430	[\$1,070] \$1,100	[\$278] \$284
3	[\$2,213] \$2,283	[\$1,744] \$1,799	[\$1,341] \$1,384	[\$399] \$408
4	[\$2,661] \$2,750	[\$2,097] \$2,167	[\$1,613] \$1,667	[\$506] \$518
5	[\$3,109] \$3,218	[\$2,450] \$2,535	[\$1,885] \$1,950	[\$601] \$615
6	[\$3,558] \$3,685	[\$2,803] \$2,904	[\$2,156] \$2,234	[\$722] \$738
7	[\$4,006] \$4,153	[\$3,156] \$3,272	[\$2,428] \$2,517	[\$798] \$816
8	[\$4,454] \$4,620	[\$3,509] \$3,640	[\$2,700] \$2,800	[\$912] \$932
\$Each Additional Member	[+\$449] +\$468	[+\$354] +\$369	[+\$272] +\$284	[+\$114] +\$117

F. Deductions and standards:

(1) Determination: Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) Yearly adjustment: The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st.

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through [4] 3	\$134.00
Standard Deduction for Household of 4	\$139.00
Standard Deduction for Household Size of 5	[\$157.00] \$162.00
Standard Deduction for Household Size of 6 or more	[\$179.00] \$186.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction Limit (per dependent)	
Under age 2	\$ 200.00
All others including elderly dependent	\$175.00
Heating/Cooling Standard Utility Allowance (HCSUA)	[\$231.00] \$232.00
Limited Utility Allowance (LUA)	[\$ 93.00] \$ 94.00
Telephone Standard (TS)	[\$ 29.00] \$ 31.00
Excess Shelter Cost Deduction Limit for Non -Elderly/Disabled Households	[\$400.00] \$417.00
Homeless Household Shelter Standard	\$ 143.00
Prescription Drug Card Deduction (valid until June 2006)	\$ 23.00]
Minimum Allotment for Eligible One -and Two-Person Households	\$ 10.00

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98,11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006]

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

This is an amendment to 8.150.100 NMAC, Section 10, effective 10-01-06.

8.150.100.10 MISSION STATEMENT:

A. ~~[CLIENT] HOUSEHOLD RELATED POLICIES:~~

(1) HSD households: ~~[Clients who] Households that~~ receive benefits from programs administered by HSD will be notified of the LIHEAP application period. Those households ~~[who] that~~ wish to apply for LIHEAP benefits may submit an application. It is HSD's policy to issue regular benefits under this program to eligible households ~~[who] that~~ apply for benefits during the specified period of application for regular benefits and ~~[who] that~~ meet the income eligibility requirement and have a responsibility to pay for energy costs as specified in this policy.

(2) Non-HSD households: It is HSD's policy to issue regular benefits under this program to ~~[non-HSD] eligible households [who] that receive no other assistance from HSD but that apply for LIHEAP benefits~~ during the specified period of application for regular benefits and ~~[who] that~~ meet the income eligibility requirement and have a responsibility to pay for energy costs as specified in this policy.

(3) Wood-primary heat source: With the exception of households ~~[who] that~~ use wood as their primary heat source and gather their own wood supply, households that do not incur a direct or indirect home energy cost are not eligible.

(4) Renter with energy costs: Renters who meet the eligibility criteria and incur a home energy cost are eligible for benefits under this program.

B. CRISIS INTERVENTION RELATED POLICIES:

(1) Crisis verification: Eligible households ~~[who] that~~ have received a written disconnect notice from their utility vendor or a statement of non-delivery or sale of fuel from their fuel vendor due to lack of payment or inability to pay may be eligible to receive a LIHEAP benefit. When a crisis situation is identified, the department is required to provide intervention to resolve the energy crisis. The processing of the applications for households in a crisis situation includes contacting the utility company or fuel provider within the specified time frames to resolve the crisis situation. Eligible households with insufficient funds to open an account with a utility vendor or meet the security deposit requirements of a utility vendor may also be eligible to receive a LIHEAP benefit. These house-

holds must also be assisted with crisis intervention. Crisis intervention is not available to households ~~[who] that~~ have received a LIHEAP benefit in the current federal fiscal year.

(2) Crisis timeliness: Assistance to resolve a crisis situation will be provided no later than 48 hours after the household's application for LIHEAP benefits. Eligible households with a life-threatening emergency will be provided assistance no later than 18 hours after the household's application for LIHEAP benefits. Assistance is defined as a contact with the vendor to intercede on the household's behalf to resolve the crisis situation.

(3) Utility/vendor mediation: HSD also assists households in negotiating with the household's utility or fuel vendor regarding the payment of arrearages or past due amounts. If the utility or fuel vendor refuses to make arrangements with the household for payment of outstanding balances, the ~~[client] household~~ will be notified that the LIHEAP benefit alone will not resolve their crisis situation. The ~~[client] household~~ will be informed of other community resources.

[7-1-95, 11-1-95, 11-15-96, 10-01-97, 10-15-98, 10-1-00; 8.150.100.10 NMAC - Rn, 8 NMAC 22.LHP.002, 10-1-01; A, 10-01-06]

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

This is an amendment to 8.150.101 NMAC, Sections 8 and 9, effective 10-01-06.

8.150.101.8 ~~[BUREAU] RESPONSIBILITIES AND DELEGATION:~~

~~[The food and nutrition services bureau (FANS) of the income support division (ISD) of the New Mexico human services department (HSD) is responsible for administering the LIHEAP grant award received from the U.S. department of health and human services (DHHS).] The income support division (ISD) of the human services department is responsible for administering the low income home energy assistance program (LIHEAP).~~

~~A. State LIHEAP plan: Every year, ISD submits a state plan to the U. S. department of health and human services (DHHS) for New Mexico's administration of LIHEAP. The proposed state plan and the proposed LIHEAP policy manual are made available for public comment and a public hearing is held.~~

~~B. LIHEAP administration: ISD is responsible for overseeing the administration of the program, including such matters as:~~

~~(1) formulating and interpreting LIHEAP policy;~~

~~(2) coordinating with other divisions within HSD for data processing of LIHEAP eligibility and payment;~~

~~(3) allocating and distributing LIHEAP monies;~~

~~(4) data entry of client information not available on the department's computer eligibility system; and~~

~~(5) oversight responsibility for LIHEAP policy and procedures training and for the review of all LIHEAP training materials.~~

[11-15-96, 10-1-00; 8.150.101.8 NMAC - Rn, 8 NMAC 22.LHP.022, 10-1-01; A, 10-1-05; A, 10-01-05; A, 10-01-06]

8.150.101.9 ~~[FANS] RESPONSIBILITIES:~~

~~A. State LIHEAP plan: Every year, the FANS submits a state plan for New Mexico's administration of LIHEAP to DHHS. The proposed state plan and the proposed LIHEAP policy manual are made available for public comment and a public hearing is held.~~

~~B. LIHEAP administration: The FANS is responsible for overseeing the administration of the program, including such matters as:~~

~~(1) formulating and interpreting LIHEAP policy;~~

~~(2) coordinating with other divisions within HSD for data processing of LIHEAP eligibility and payment;~~

~~(3) allocating and distributing LIHEAP monies;~~

~~(4) data entry of client information not available on ISD 2; and~~

~~(5) oversight responsibility for LIHEAP policy and procedures training and for the review of all LIHEAP training materials.] [RESERVED]~~

[7-1-95, 11-1-95, 11-15-96, 10-1-00; 8.150.101.9 NMAC - Rn, 8 NMAC 22.LHP.022, 10-1-01; A, 10-1-05; A, 10-01-06]

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

This is an amendment to 8.150.102 NMAC, Section 8, effective 10-01-06.

8.150.102.8 ISD FIELD OFFICE RESPONSIBILITIES: Each of the field offices of the income support division in the state is responsible for:

A. providing outreach and referral for low-income clients, particularly disabled and elderly clients, regarding the LIHEAP program;

B. informing low-income ~~[clients] households,~~ particularly disabled

and elderly clients, about the eligibility determination process and application procedures for the LIHEAP program;

C. providing documentation to households requesting verification of cash benefits received from the human services department or other documentation available to the department or in the case file;

D. complying with other LIHEAP program directives as may be issued by ~~[FANS]~~ ISD;

E. assisting all applicant households to complete the LIHEAP application and interviewing the household when LIHEAP benefits have been requested;

F. entering the completed LIHEAP application into ~~[HLEA]~~ the designated LIHEAP computer system;

G. responding to inquires about the status of a LIHEAP application; and

H. processing payment errors when identified; the ISD office must issue a supplement in cases of benefit under-issuances or complete and submit paperwork to restitution for over-issuances. [7-1-95, 11-1-95, 11-15-96, 10-01-97, 10-1-00; 8.150.102.8 NMAC - Rn, 8 NMAC 22.LHP.023, 10-1-01; A, 10-1-05; A, 10-01-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.150.410 NMAC, Sections 8, 12, 13, 14 and 15, effective 10-01-06.

8.150.410.8 HOUSEHOLD UNIT: ~~[For purposes of LIHEAP, a household is an individual who incurs a heating cost or a group of individuals living together who incur a heating cost in common.]~~ For purposes of LIHEAP, a household is an individual, or group of individuals living together, who incurs a heating or cooling cost. The heating or cooling cost must be to meet residential, not business or industrial, heating or cooling needs. [7-1-95, 11-1-95, 11-15-96, 10-15-98; 8.150.410.8 NMAC - Rn, 8 NMAC 22.LHP.410.11 & A, 10-1-01; A, 10-01-06]

8.150.410.12 INDIAN TRIBAL ELIGIBILITY: In New Mexico, an Indian tribe may choose to administer its own LIHEAP program for tribal members and request from DHHS an allocation of the state's share of the LIHEAP grant award for this purpose. An Indian tribe is defined as a legal entity of a group of Native Americans living on tribal lands with a distinct and separate government. Residents of tribal land may be eligible for tribal administered

LIHEAP or HSD-administered LIHEAP under the following circumstances.

A. Tribes that administer LIHEAP: Indian tribal members living on their tribe's tribal lands, whose tribe administers their own LIHEAP program, are not eligible for HSD-administered LIHEAP benefits.

B. Tribes not administering LIHEAP: Indian tribal members living on the tribal lands of tribes not administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet ~~[categorical or]~~ income eligibility and heating/cooling responsibility requirements as specified in this policy.

C. Indians on other tribes' land: ~~[Indians who]~~ Households that are members of Indian tribes administering their own LIHEAP program but not living on their tribe's tribal lands, may be considered for HSD-administered LIHEAP benefits providing they meet ~~[categorical or]~~ income eligibility and heating responsibility requirements, as specified in this policy, and they did not receive LIHEAP benefits from their tribal government.

D. Non-Indians and non-tribal members on tribal land: Non-Indians living on tribal lands and Indians living on tribal lands who are excluded from eligibility for LIHEAP by the Indian tribe administering their own LIHEAP program may be considered for HSD-administered LIHEAP benefits providing they meet ~~[categorical or]~~ income eligibility and heating/cooling responsibility requirements as specified in this policy.

E. At the direction of the HSD secretary, HSD may serve tribal members normally excluded due to Subsection A of 8.150.410.12 NMAC if they have not been or do not expect to be served by the tribal LIHEAP program. [7-1-95, 11-1-95, 11-15-96; 8.150.410.12 NMAC - Rn, 8 NMAC 22.LHP.410 & A, 10-10-01; A, 10-1-05; A, 10-01-06]

8.150.410.13 CITIZENSHIP: To be eligible, a LIHEAP household must contain at least one member who is a (1) U.S. citizen, or (2) a ~~[legal alien considered eligible to participate in the Food Stamp]~~ qualified alien considered eligible to participate in the TANF program. See 8 USC Sec. 1641, Title 8, Chapter 14, Subchapter IV, and any subsequent changes. [7-1-95, 11-1-95; 8.150.410.13 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-01-06]

8.150.410.14 RESIDENCY: To be eligible, a LIHEAP household must have a residence in New Mexico and be occupying that residence at the time of application ~~[or~~

~~automatic review]~~. The LIHEAP benefit must be applied toward the utility or fuel costs incurred for that residence.

[7-1-95, 11-1-95; 8.150.410.14 NMAC - Rn, 8 NMAC 22.LHP.410, 10-1-01; A, 10-01-06]

8.150.410.15 ENUMERATION: To be eligible for inclusion in the LIHEAP benefit group, a social security number (SSN) or proof of application for a number must be provided for each citizen and qualified alien for which assistance is being requested. Any member(s) of a LIHEAP applicant household who do not meet the requirements of this section will not be eligible for a LIHEAP benefit.

[8.150.410.15 NMAC - N, 10-01-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.150.430 NMAC, Sections 8 and 9, effective 10-01-06.

8.150.430.8 RECIPIENT RIGHTS:

A. Treatment and non-discrimination: ~~[The household has]~~ Members of a household have the right, at all times, to be treated with dignity. ~~[The]~~ Household members may not be discriminated against on the basis of age, sex, race, color, ~~[necessity]~~ handicap, national origin, or religious or political belief.

B. Confidentiality: The household ~~[has]~~ members have the right to confidentiality.

C. Fair hearings: ~~[HSD]~~ The household [have] has the right to disagree with the determinations made by HSD and to appeal such action through HSD's fair hearing process.

[7-1-95, 11-1-95, 11-15-96, 10-1-00; 8.150.430.8 NMAC - Rn, 8 NMAC 22.LHP.430.1, 10-1-01; A, 10-01-06]

8.150.430.9 RECIPIENT RESPONSIBILITIES:

A. Benefit purpose: The household is responsible for using the benefit received for the purpose intended.

B. Erroneously issued benefits: If it is determined the household is not entitled to the benefit received, whether agency or client caused, the household is responsible for paying back ~~[said]~~ the benefits received. The household is responsible for repayment whether the benefit was received directly by the household or paid to a vendor.

[7-1-95, 11-1-95, 11-15-96, 10-1-97; 8.150.430.9 NMAC - Rn, 8 NMAC

22.LHP.430.2, 10-1-01; A, 10-01-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.150.500 NMAC, Sections 8 and 9, effective 10-01-06.

8.150.500.8 NEED DETERMINATION: To be eligible for LIHEAP benefits households must do the following:

A. Application: A household member or representative must complete an application for LIHEAP benefits and be interviewed; and

B. Documentation: The household must provide the following:

(1) Proof of identity ~~[for]~~ of applicant ~~[or representative picture ID]~~ by:

- (a) birth certificates(s); or
- (b) baptism certificate; or
- (c) hospital or birth record; or
- (d) divorce papers; or
- (e) alien registration card; or
- (f) immigration & naturalization service (INS) records; or
- (g) U. S. passport; or
- (h) Indian census records; or
- (i) family bible; or
- (j) school or day care records;

or:

- (k) government records; or
- (l) social security records; or
- (m) social service records; or
- (n) insurance policy; or
- (o) court records; or
- (p) church records; or
- (q) voter registration card; or
- (r) letter from doctor, religious

official or school official, or someone else who knows the applicant; or

(s) applicant sworn statement.

(2) Proof of citizenship or legal resident status if questionable, such as birth certificate, permanent resident card, naturalization papers, etc.;

(3) Social security numbers for all household members. A social security card is required if the number has not been issued by the social security administration or is being used by another person in the ISD data bases;

(4) Proof of gross income for all household members, such as check stubs, award letters, statement from employer, etc.;

(5) Proof of utility expense in past twelve months and account number at current residence:

- (a) bill for metered service for a one-month period, or
- (b) two purchase receipts for propane, or
- (c) receipt for wood purchase,

or

(d) rental agreement or landlord statement that utilities are included in rent, or

(e) signed statement or billing history from a utility or fuel vendor. ~~[and]~~

(6) Proof of crisis when the situation exists, such as a disconnect notice, statement of non-delivery of bulk fuel or statement detailing the cost of initiating service;

(7) Proof of disability for at least one household member, if claimed [~~Dr's~~], such as a doctor's statement, SSI award letter, statement of receipt of worker's compensation or DVR services, other disability-based income, etc.; and

(8) Proof of emergency expenditures that apply to 8.150.526 NMAC.

C. Eligibility criteria: The household must meet the identity, social security number, income, citizenship, utility responsibility, and residency requirements. [7-1-95, 11-1-95, 11-15-96, 10-1-97, 10-15-98; 8.150.500.8 NMAC - Rn, 8 NMAC 22.LHP.501.11 & A, 10-1-01; A, 10-01-06]

8.150.500.9 CRISIS INTERVENTION: To be eligible for LIHEAP crisis intervention, the household must meet the eligibility criteria for regular benefits as specified above in 8.150.500.8 NMAC, must not have received a LIHEAP benefit in the current federal fiscal year and, in addition, be able to:

A. Crisis verification: Provide verification [~~which~~] that proves the applicant household is facing a current or impending energy crisis, established with any one of the following:

(1) written notice of disconnect for the household from a utility vendor for a disconnect date after the close of the previous LIHEAP crisis [~~heating LIHEAP~~] season;

(2) proof of insufficient funds for the household to open an account with a utility vendor or meet the security deposit requirements of a utility vendor;

(3) statement from [~~a~~] the household's fuel vendor [~~for the household~~] that fuel will not be provided without payment.

B. Community referrals: In circumstances where the household is not eligible for crisis intervention, the household must be informed of other resources in the community, particularly other utility assistance programs available through a community action agency, which may be able to assist the household in meeting its energy expenses.

[7-1-95, 11-1-95, 11-15-96, 10-15-98 10-1-00; 8.150.500.9 NMAC - Rn, 8 NMAC 22.LHP.501.12, 10-1-01; A, 10-01-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an amendment to 8.150.520 NMAC, Sections 8 and 10, effective 10-01-06.

8.150.520.8 EARNED INCOME:

A. Definitions: Earned income is defined as income received in the form of wages paid on a predetermined regular basis, pay received irregularly for work performed irregularly, or income resulting from self-employment activities. Income from rental property, if 20 hours or more per week are spent working as a landlord, is also countable as earned income.

B. Exclusions: The following are not counted as income:

(1) in-kind benefits: (i.e. good or services realized, provided or exchanged for non-monetary compensation);

(2) vendor payments: (i.e. payments made on behalf of a household to a third party);

(3) lump sum payments: food stamp policy [~~citation subparagraph d of paragraph 6 of subsection D of 8.139.520.9 NMAC~~] on lump sum policy in 8.139 NMAC;

(4) loans;

(5) charitable contributions from nonprofit agencies to meet household expenses;

(6) earned income tax credits;

(7) value of food stamps;

(8) TANF annual clothing allowance;

(9) monies received for the care of a third party beneficiary who is not a household member; and

(10) monies excluded by federal statute, a listing of which can be found in food stamp policy citation [~~8.139.527 NMAC~~] 8.139 NMAC.

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-99, 10-1-00; 8.150.520.8 NMAC - Rn, 8 NMAC 22.LHP.520.2, 10-1-01; A, 10-01-06]

8.150.520.10 INCOME OF INELIGIBLE ALIENS: The income received by any ineligible alien household member must be prorated.

A. Definition: If any member of the household providing income to the household is an ineligible alien for [~~Food Stamp Program~~] TANF purposes, that member's income is not counted in its entirety but is prorated. Prorating results in excluding a portion of the ineligible alien household member's income from consideration because the ineligible alien is not a recipient of public assistance benefits.

B. Proration calculation:

Calculate the gross income of the ineligible alien and divide the total by the number of members, eligible and ineligible, in the household. The resulting figure is the pro-rata portion of the income for each member, eligible and ineligible. To determine the portion of the income to be counted, multiply the pro rata portion by the remaining number of eligible household members. [7-1-95, 11-1-95, 11-15-96; 8.150.520.10 NMAC - Rn, 8 NMAC 22.LHP.520.4, 10-1-01; A, 10-01-06]

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

This is an amendment to 8.150.522 NMAC, Section 8, effective 10-01-06.

8.150.522.8 U N E A R N E D INCOME:

A. Definition: Unearned income is, generally, income received in the form of entitlement, disability, retirement or unemployment benefits. Some examples of these types of payments are OASDI, SSL, worker's compensation, and unemployment compensation benefits (UCB.)

B. Gross unearned income: The gross amount of the benefit or payment must be counted. In the case of OASDI benefits, the gross amount of the benefit includes the amount deducted for the medicare premium, if applicable.

C. Other unearned income: Unearned income includes but is not limited to the following:

- (1) child support;
- (2) alimony;
- (3) temporary assistance to needy families (TANF) benefits;
- (4) general assistance (GA) payments;
- (5) royalties;
- (6) dividends and interest;
- (7) tribal benefits.

D. Real estate contracts: Monthly payments resulting from the sale of property and contributions from family or friends are also countable unearned income.

E. Exclusions: The following are not counted as income:

- (1) in-kind benefits (i.e. goods or services realized, provided or exchanged for non-monetary compensation);
- (2) vendor payments (i.e. payments made on behalf of a household to a third party);
- (3) lump sum payments: see food stamp policy [citation subsection d of sub-paragraph 6 of paragraph D of 8.139.520.9 NMAC] on lump sum payments in 8.139 NMAC;
- (4) loans;

(5) charitable contributions from nonprofit agencies to meet household expenses;

(6) earned income tax credits;

(7) value of food stamps;

(8) TANF annual clothing allowance;

(9) monies received for the care of a third party beneficiary who is not a household member; and

(10) monies excluded by federal statute, a listing of which can be found in food stamp policy citation [8.139.527 NMAC] 8.139 NMAC.

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-99, 10-1-00; 8.150.522.8 NMAC - Rn, 8 NMAC 22.LHP.522, 10-1-01; A, 10-01-06]

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

This is an amendment to 8.150.524 NMAC, Section 9, effective 10-01-06.

8.150.524.9 INCOME STANDARD:

Income guidelines for eligibility will be updated at the beginning of each federal fiscal year as required by federal statute. The guidelines will be effective for the entire federal fiscal year beginning October 1 and ending September 30. The gross monthly income maximum will be 150% of the applicable federal poverty guidelines. LIHEAP income guidelines are available from all human services department income support division offices, by writing to: Human Services Department LIHEAP P O Box 26507 Albuquerque NM 87125-6507 or by contacting the income support division customer service desk at 1 800 283-4465 or [TDDY 1 800 609 9454] New Mexico Relay at 1 800 659-8331. If you are disabled and need the guidelines in an alternative format, please make the request when you contact us. The income guidelines are also located on the HSD income support division web site at <http://www.state.nm.us/hsd/isd.html>.

[11-15-96, 11-01-97, 10-15-98, 10-1-99, 10-1-00; 8.150.524.9 NMAC - Rn, 8 NMAC 22.LHP.524 & A, 10-1-01; A, 10-01-06]

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

This is an amendment to 8.150.526 NMAC, Section 10, effective 10-01-06.

8.150.526.10 HOUSEHOLD EMERGENCY EXPENSES:

A. Definition: Household emergency expenses are defined as expens-

es incurred and paid by the household in the 30 days prior to the application date or the initial payment during that period of a bill resulting from a recent household emergency [as the result of non-elective medical expenses], such as:

(1) hospital, ambulance, doctor and dental bills;

(2) laboratory and other testing bills;

(3) prescriptions and non-prescription items ordered by a licensed health care professional; and

(4) services provided or ordered by a licensed health care professional; or

(5) non-elective medical expenses.

B. Emergency medical expenses, such as:

(1) hospital bills; and

(2) ambulance bills;

C. expenses resulting from the death of a household member or other major household crisis; or

D. repair or replacement of the household's primary vehicle;

E. licensure exemption: Native American practitioners (medicine men), though not licensed by the state, are specifically recognized by HSD as health care providers under this policy.

[7-1-95, 11-1-95, 11-15-96, 10-1-00; 8.150.526.10 NMAC - Rn, 8 NMAC 22.LHP.526.12 & 13, 10-1-01; A, 10-01-06]

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

This is an amendment to 8.150.600 NMAC, Section 8, effective 10-01-06.

8.150.600.8 BENEFITS - ISSUANCE AND USE:

A. Issuance of benefits: Benefits are issued in one of the three following methods:

(1) client warrants: HSD issues benefits directly to clients through client warrants when authorized by the LIHEAP director; or

(2) vendor payments:

(a) HSD will provide the name and, when applicable, customer account number for the LIHEAP-eligible household to the vendor specified by the household. The vendor will notify HSD of mismatches within a specified time frame.

(b) Vendors who carry customer accounts will credit eligible households with the amount of the LIHEAP regular benefit no more than 30 days from the time of the payment. Vendors who provide fuel on demand will provide fuel to eligible households equal to the amount of the LIHEAP regular benefit no more than 30

days from the date of the eligible household's contact with the vendor to make arrangements for the provision of such fuel.

(c) Vendors may transfer excess LIHEAP benefits from the account originally credited to another account they have for the household. The vendor must document the transfer in a manner that meets generally accepted audit standards. In order to transfer LIHEAP funds, the following conditions must be met:

(i) the vendor must provide multiple utility services and/or bulk fuel; and

(ii) a credit remains on the originally credited account after current and delinquent charges are satisfied; and

(iii) the household approves the transfer; and

(iv) the utility or bulk fuel account that is credited is used by the household for their heating or cooling needs; or

(d) Vendors should transfer a LIHEAP benefit credit on an account that is closed after the credit is posted. The transfer must be to a new or existing account for the new residence of the recipient household. The vendor must document the transfer in a manner that meets generally accepted audit standards.

(e) Vendors may refund LIHEAP benefit credit to a household under certain circumstances when the household moves and/or will not have service with the company at their residence. The vendor must document the transfer in a manner that meets generally accepted audit standards.

(f) Vendors must refund LIHEAP benefit credits on closed accounts to HSD when the credit cannot be transferred to a new account and/or the household cannot be located.

(3) electronic benefit transfer account: LIHEAP benefits are deposited directly into the household's special account that may be:

(a) a cash account available to the household at ~~[ATMs]~~ ATMs and retail stores; or

(b) a special account for LIHEAP payments accessed at authorized utility vendors to pay for heating or cooling costs; the EBT card is used at a point of sale (POS) terminal at the utility company office or other retailers authorized to accept utility company payments.

B. Benefit use: The recipient household is responsible for using the benefit for the purpose intended:

(1) to purchase fuel, such as propane, wood, coal, kerosene, fuel oil or other unregulated fuels;

(2) to pay the household's utility charges, such as those for electric or natural gas services;

(3) to purchase gasoline and/or

tools needed when a household gathers/cuts its own firewood;

(4) to pay a landlord for the utility costs that are included in the rent payment;

(5) to pay for a deposit obligation needed to initiate or continue service.

[7-1-95, 11-1-95, 11-15-96, 10-01-97; 8.150.600.8 NMAC - Rn, 8 NMAC 22.LHP.601 & A, 10-1-01; A, 10-1-05; A, 10-01-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.150.620 NMAC, Sections 9, 10 and 11, effective 10-01-06.

8.150.620.9 CALCULATING THE BENEFIT/ASSIGNMENT OF POINTS:

To determine the amount of the ~~[regular]~~ benefit for households with an energy cost, HSD assigns points for each following factors.

A. Energy costs points: Points are assigned based on the cost of heating and cooling for a household at their current residence.

(1) Energy burden: Energy burden is "the expenditures of the household for home energy divided by the income of the household." Points are assigned to the household by determining the households' percentage of energy burden. The point allocation for energy burden is:

(a) 0 points for 0 - 5% energy burden;

(b) 1 point for 6 - 10% energy burden;

(c) 2 points for 11 - 15% energy burden;

(d) 3 points for 16% or more energy burden; or

(2) Energy matrix: When there is insufficient information to calculate energy burden, the energy matrix will be used to determine energy cost points. Households that have never had utility service or bulk fuel usage at their current residence will have their energy cost points determined by using the energy matrix. The matrix will be used for households who have moved into a new residence or when new heating or cooling appliances have been installed. The matrix is calculated using prior year recipient data to determine average energy cost points based on housing type, utility type and zip code. When no data is available for the housing type, utility type and zip code, the average for the zip code will be used.

B. Income points: HSD assigns income points using the household's monthly total countable gross income and the household size. The number of points is

determined by identifying what percentage ~~[that]~~ the household's income is^[7] of the federal poverty guidelines (FPG) of the LIHEAP FFY. For example, if the total monthly income is 60% of the FPG, the household will receive ~~[four]~~ three income points. (See below.)

(1) ~~[4]~~ 3 points - income is 0 - ~~[75%]~~ 100% of the FPG

(2) ~~[3]~~ 2 points - income is ~~[76-]~~ 100 - 150% of the FPG

~~[(3) 2 points - income is 101-125% of the FPG]~~

~~[(4) 1 point - income is 126%-150% of the FPG]~~

C. Vulnerable population points: HSD assigns additional points for any household members in the following vulnerable groups.

(1) Age 60 and over: Two (2) points are assigned to eligible households based on the inclusion of one or more household members age 60 or over as determined by birthdate data.

(2) Age ~~[6]~~ 5 and under: Two (2) points are assigned to eligible households based on the inclusion of one or more household members age ~~[6]~~ 5 and under as determined by birthdate data.

(3) Disability: Two (2) points are assigned to eligible households having one or more members with a disability. Disability is defined as physical or mental impairment resulting in substantial reduction in the ability of an individual to care for him/herself or carry out normal activities. When one or more members receive disability based income, the household is entitled to the ~~[point]~~ points. A doctor's statement of current disability will be required for assignment of the point for this factor if the disabled member does not receive disability-based income.

[7-1-95, 11-1-95, 11-15-96, 10-1-97, 12-1-97, 10-1-00; 8.150.620.9 NMAC - Rn, 8 NMAC 22.LHP.621.1 & A, 10-1-01; A, 10-1-05; A, 10-01-06]

8.150.620.10 CALCULATION OF BENEFIT AMOUNT:

A. Prior to the start of the application period projections will be made to determine point value. Anticipated grant of award, potential applicants and the current economy of the state of New Mexico will be used to determine the point value. Households eligible for a LIHEAP benefit will have their point total multiplied times the point value. The product is the amount of payment that is issued to the utility vendor for credit on the household's account or is sent to the household.

B. Benefits are issued for eligible applications received through August 31 or as long as grant of award funds are available, whichever is earlier. The application period ends when funds are

exhausted.

C. At the direction of the HSD secretary, the point value for energy cost points, income points[;] and/or vulnerable population points, or any of their parts, may be ~~[higher or lower than the value determined under]~~ adjusted as necessary taking into consideration the factors described in Subsection A of 8.150.620.10 NMAC.

[7-1-95, 11-1-95, 11-15-96, 10-1-97, 10-15-98, 10-1-00; 8.150.620.10 NMAC - Rn, 8 NMAC 22.LHP.621.2, 10-1-01; A, 10-01-05; A, 10-01-06]

8.150.620.11 POINTS INFORMATION SOURCE: The LIHEAP points guidelines are available from all human services department income support division offices, by writing to: Human Services Department LIHEAP P O Box 25607 Albuquerque NM 87125-6507 or by contacting the income support division customer service desk at 1 800 283-4465 or ~~[TDDY 1 800 609 9454]~~ Relay New Mexico at 1-800 659-8331. If you are disabled and need the guidelines in an alternative format, please make the request when you contact us. The points guidelines are also located on the HSD income support division web site at <http://www.state.nm.us/hsd/isd.html>. [8.150.620.11 - N, 10-1-01; A, 10-01-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to **8.150.624 NMAC, Section 8, effective 10-01-06.**

8.150.624.8 RETROACTIVE BENEFIT COVERAGE: Households ~~[who]~~ that were denied LIHEAP benefits [but who] or received a lesser benefit than they were entitled to but, as the result of an agency conference or fair hearing, are determined to be entitled to a benefit will be issued a retroactive benefit. [7-1-95, 11-1-95, 11-15-96, 10-1-97; 8.150.624.8 NMAC - Rn, 8 NMAC 22.LHP.624, 10-1-01; A, 10-01-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.206.400 NMAC, Sections 5 and 9, which will be effective on October 1, 2006. The Medical Assistance Division amended the sections to allow children who age out of category 006 or 066 at age 18 to continue receiving Medicaid until age 21 as long as they continue to receive Chafee Independent Living Funds

from CYFD.

8.206.400.5 EFFECTIVE DATE: October 1, 1994, unless a later date is cited at the end of a section. [10/1/94; 8.206.400.5 NMAC - Rn, 8 NMAC 4.CYM.000.5, 7/1/03; A, 10/1/06]

8.206.400.9 MEDICAID FOR RECIPIENTS UNDER EIGHTEEN YEARS OF AGE FOR WHOM THE CHILDREN, YOUTH, AND FAMILIES DEPARTMENT HAS FULL OR PARTIAL FINANCIAL RESPONSIBILITY - CATEGORIES, 006, 017, 037, 046, 047, 060, 061, 066, AND 086 AND EXTENDED MEDICAID FOR CERTAIN INDIVIDUALS IN FOSTER CARE CATEGORIES, 006 AND 066 RECEIVING CHAFEE INDEPENDENT LIVING FUNDS:

A. The New Mexico medicaid program (medicaid) is required to furnish coverage to recipients under eighteen (18) years of age for whom adoption assistance or foster care maintenance payments are made under Title IV-E of the Social Security Act [42 CFR Section 436.118].

B. Medicaid has opted to furnish coverage to recipients under eighteen (18) years of age who meet all the aid to families with dependent children (AFDC) eligibility criteria except for the definition of "dependent child" for whom the state of New Mexico, through the children, youth, and families department (CYFD) has assumed full or partial financial responsibility [42 CFR Section 436.222].

C. Medicaid furnishes extended coverage to recipients under twenty-one (21) years of age who remain under CYFD foster care categories 006 and 066 after attaining the age of 18 years and who are receiving Chafee independent living funds.

[C-] D. For purposes of this provision, the following definitions apply:

(1) "Full or partial financial responsibility" means CYFD has made a payment on behalf of the recipient during each month for which medicaid eligibility is sought. The nature of CYFD's financial responsibility must be documented. Documentation must include the court-ordered placement and/or custody award and CYFD payments made on behalf of the recipient at the time of application and each subsequent periodic review.

(2) "Private institutions" includes accredited and non-accredited residential treatment centers and group homes, and treatment foster care. Institutions specifically excluded from this definition are the youth diagnostic development center, New Mexico boys and girls schools, and reintegration centers which are not certified to

furnish medical care. A child placed in these facilities is not eligible for medicaid.

(3) "Substitute placement" includes placement in foster homes or private institutions.

[10/1/94; 8.206.400.9 NMAC - Rn, 8 NMAC 4.CYM.400, 7/1/03; A, 10/1/06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.206.500 NMAC, Sections 5 and 10, which will be effective on October 1, 2006. The Medical Assistance Division amended the sections to allow children who age out of category 006 or 066 at age 18 to continue receiving Medicaid until age 21 as long as they continue to receive Chafee Independent Living Funds from CYFD.

8.206.500.5 EFFECTIVE DATE: October 1, 1994, unless a later date is cited at the end of a section. [10-1-94; 8.206.500.5 NMAC - Rn, 8 NMAC 4.CYM.000.5, 3-1-01; A, 10-1-06]

8.206.500.10 RESOURCE STANDARDS: To be eligible for CYFD medicaid, the value of all countable personal and real property, considered belonging to or available to an applicant/recipient under eighteen (18) years of age or twenty-one (21) years of age in expanded foster care medicaid category 006 or 066 cannot exceed \$1,000. If an applicant/recipients owns resource or saving in excess of this amount, he/she is not eligible for CYFD medicaid.

[10-1-94; 8.206.500.10 NMAC - Rn, 8 NMAC 4.CYM.510, 3-1-01; A, 10-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.235.500 NMAC, Sections 5 and 11, which will be effective on October 1, 2006. The Medical Assistance Division amended the section to allow for the disregard of income equal to the difference between 185% and 235% federal poverty level for the woman's household size.

8.235.500.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section. [2/1/95; 8.235.500.5 NMAC - Rn, 8 NMAC 4.PSO.000.5, 6/1/04; A, 10/1/06]

8.235.500.11 INCOME STANDARDS: The income standard used in the eligibility determination for pregnancy-

related services only is 185 percent of the federal poverty income level. The federal poverty level is adjusted annually effective April 1. The income standard is determined by the number of members in the assistance unit. The assistance unit is based on the relationship of individuals in the household to the unborn child(ren) if any. For pregnancy related services, the needs of the unborn child(ren), [if any,] are included.

A. Income exclusions:

The income of a stepparent of a minor applicant woman is not considered available unless the income is actually made available to the applicant. If the applicant is a sponsored alien, refer to 8.200.410.11 NMAC.

B. Earned income deductions and disregards:

Earned income deductions and disregards applicable to the cash assistance program preceding TANF (formerly known as the AFDC program) are used in the eligibility determination for category 035.

(1) Work related expenses:

A \$90.00 deduction per month is given for each individual in the assistance unit with earned income.

(2) Child care expenses:

The actual cost of child care, provided the child is under the age of 13, is deducted with the following limitations:

(a) If the wage earner is employed full time (>=30 hours per week),

deduct up to \$200.00 per month per child under age two years and up to \$175.00 per month per child between the ages two years and twelve years of age.

(b) If the wage earner is employed part time (< 30 hours per week),

up to \$100.00 per month is deducted for each child under the age of two and up to \$87.50 is deducted per month for each child from age two through twelve.

(3) Additional disregard:

Disregard an amount equal to the difference between 185% and 235% federal poverty level for the appropriate assistance unit size if the applicant/recipient's countable income is at or above 185% federal poverty level.

[2/1/95, 6/30/98; 8.235.500.11 NMAC - Rn, 8 NMAC 4.PSO.520, 521.1 & 521.2 & A, 6/1/04; A, 10/1/06]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.5.8 NMAC, eliminating the coupled entries rule. Effective 09/29/2006.

15.2.5.8 ENTRIES AND NOMINATIONS:

A. ENTERING:

No horse shall be qualified to start unless it has been and continues to be entered.

B. PROCEDURE:

(1) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

(2) An entry shall be in the name of the horse's licensed owner and made by the owner, trainer or a licensed designee of the owner or trainer. Any horse which is in a race or on the also-eligible list may not be sold or transferred until that obligation is completed, except with permission of the stewards.

(3) Numbered races printed in the condition book shall have preference over extra races. Should any race fail to draw seven (7) separate wagering interests, it may be called off.

(4) An entry must be in writing, by telephone, electronically or facsimile machine to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(5) The person making an entry shall clearly designate the horse so entered.

(6) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the stewards.

(7) No horse may be entered in more than one race (with the exception of stakes races) to be run on the same day at the same track on which pari-mutuel wagering is conducted. If a horse is entered in more than one stakes race to be run on the same day, at the time of draw, the trainer must declare which race the horse will run in.

(8) Any permitted medication must be declared on the original entry at each race meet. No further declaration will be required at that meet unless there is a change.

(9) Any approved change of equipment must be declared at time of entry. Any changes after that time must be approved by the stewards.

[C. COUPLED ENTRIES:

~~**(1)** Two or more horses which are entered in a race shall be joined as a mutuel entry and single betting interest if they are owned or leased in whole or in part by the same owner or are trained by a trainer who owns or leases any interest in any of the other horses in the race.~~

~~**(2)** For trial races, entries will be split by owners, trainers and leased horses consecutively. If a leased horse draws into the same trial race of a horse that is owned or leased in whole or in part by the same owner, or trainer who owns or leases any other horse in the race, it will be coupled.~~

~~**(3)** No more than two horses having common ties through ownership or~~

~~training may be entered in any overnight race. When making a coupled or uncoupled entry in an overnight race, the horse with the better date will be preferred. If both horses have the same date, the trainer must make a first and second choice. Under no circumstances may both horses of a coupled, or uncoupled, entry start to the exclusion of a single preferred entry unless the race conditions specifically state otherwise. No two preferred horses entered by the same trainer or owned by the same owner shall start to the exclusion of a single preferred entry in overnight races.]~~

[D.]C. NOMINATIONS:

(1) Any nominator to a stakes race may transfer or declare such nomination prior to closing.

(2) Joint nominations and entries may be made by any one of joint owners of a horse, and each such owner shall be jointly and severally liable for all payments due.

(3) Death of a horse, or a mistake in its entry when such horse is eligible, does not release the nominator or transferee from liability for all stakes fees due. No fees paid in connection with a nomination to a stakes race that is run shall be refunded except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator to a stakes race shall not render void any subscription, entry or right of entry. All rights, privileges and obligations shall be attached to the legal heirs of the decedent or the successor owner of the horse.

(5) When a horse is sold privately or at public auction or claimed, stakes engagements shall be transferred automatically to its new owner; except when the horse is transferred to a person whose license is suspended or who is otherwise unqualified to race or enter the horse, then such nomination shall be void as of the date of such transfer.

(6) All stakes fees paid toward a stakes race shall be allocated as provided by the conditions for the race. If a stakes race is not run for any reason, all such nomination fees paid shall be refunded.

[E.]D. CLOSINGS:

(1) Entries for purse races and nominations to stakes races shall close at the time designated by the association in previously published conditions for such races. No entry, nomination or declaration shall be accepted after such closing time; except in the event of an emergency or if an overnight race fails to fill, the racing secretary may, with the approval of a steward, extend such closing time.

(2) Except as otherwise provided in the conditions for a stakes race, the deadline for accepting nominations and declarations is midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

[F.]E. NUMBER OF STARTERS IN A RACE: The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and its extensions. The number of starters may be further limited by the number of horses, which, in the opinion of the stewards, can be afforded a safe, fair and equal start.

[G.]E. SPLIT OR DIVIDED RACES:

(1) In the event a race is cancelled or declared off, the association may split any overnight race for which postpositions have not been drawn.

(2) Where an overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before such races are closed to grant time for making additional entries to such split races.

[H.]G. POST POSITIONS: Post positions for all races shall be determined by lot and shall be publicly drawn in the presence of a steward or steward designee.

[I.]H. ALSO-ELIGIBLE LIST:

(1) If the number of entries for a race exceeds the number of horses permitted to start, the racing secretary may create and post an also-eligible list.

(2) If any horse is scratched from a race for which an also-eligible list was created, a replacement horse shall be drawn from the also-eligible list into the race in order of preference. If none is preferred, a horse shall be drawn into the race from the also-eligible list by public lot. Horses which gain a position in a race from the also-eligible list take the outside post position in the order drawn from the also-eligible list.

(3) Any owner or trainer of a horse on the also-eligible list who does not wish to start the horse in such race shall so notify the racing secretary prior to scratch time for the race, thereby forfeiting any preference to which the horse may have been entitled in that race.

(4) If a scratch card is deposited for a horse listed as also-eligible, and if that horse is offered an opportunity to run by being drawn at scratch time, the horse shall lose its position on the preferred list.

[J.]L. PREFERRED LIST: The racing secretary shall maintain a list of each horse's registration date, entry date, and racing date. Preference will be given to the best date. No date will be kept longer than sixty (60) days. A registration date can only be established when the foal certificate is on file with a racing secretary. An entry date is any time a horse passes the entry box, whether or not the race is in the condition book, or an extra, is used or eliminated.

When the earliest entry date reaches sixty (60) days and expires, the next best entry date for that horse becomes its preferred date. Entry dates have preference over race or registration dates of the same date. Any horse, which is scratched, will lose its date and must re-establish a date. All horses placed on the steward's, veterinarian's, starter's or identifier's list will be posted on the bulletin board and will lose their dates. (An exception may be made, when in the opinion of the board of stewards, a horse would be unduly penalized.)

[15.2.5.8 NMAC - Rp, 15 NMAC 2.5.8, 03/15/2001; A, 05/15/2001; A, 11/15/2001; A, 12/14/2001; A, 03/31/2003; A, 05/30/2003; A, 06/13/2003; A, 09/29/2006]

NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.6.9 NMAC, incorporating the Revised April 15, 2004 "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule" by the Association of Racing Commissioners International as referenced. Effective 09/29/2006.

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

The "uniform classification guidelines for foreign substances and recommended penalties and model rule", revised April 15, 2004, as issued by the association of racing commissioners international, is incorporated by reference. Upon a finding of a violation of these medication and prohibited substances rules, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners International and impose penalties and disciplinary measures consistent with the recommendations contained therein. The guidelines and recommended penalties shall be provided to all license holders by attachment to this section. Provided, however, that in the event a majority of the stewards determine that mitigating circumstances require imposition of a lesser penalty they may impose the lesser penalty. In the event a majority of the stewards wish to impose a greater penalty or a penalty in excess of the authority granted them, then, and in such event, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection A and O of 16.47.1.8 NMAC eliminating the licensing of casino employees by the New Mexico Racing commission. Effective 09/29/2006.

16.47.1.8 GENERAL PROVISIONS

A. LICENSES

REQUIRED: A person as defined by Subsection P, Paragraph (7) of 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the commission, or be employed by an association who is a gaming operator, without a valid license issued by the commission.

(1) License categories shall include the following and others as may be established by the commission: **GROUP A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. **GROUP B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **GROUP C** - supervisory racing officials. **GROUP D** - persons employed by the association, or employed by a person or concern contracting with the association, to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **GROUP E** - racetrack [~~or casino participant~~] employees.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Announcer	\$55.00
Assistant General Manager	\$80.00
Assistant Racing Secretary	\$15.00
Association	\$80.00
Auditor, Official	\$55.00
[Casino Employee	\$ 5.00]
Clerk of Scales	\$15.00
Clocker	\$15.00
Club, Racetrack	\$80.00
Concession Employee	\$ 5.00
Concession Operator	\$80.00
Custodian of Jockey Room	\$15.00
Director or Corporate Officer	\$80.00
Director of Operations	\$55.00
Director of Racing	\$55.00
Exercise Person	\$15.00
General Manager	\$80.00
Groom	\$ 5.00

Horseman's Bookkeeper	\$15.00
Identifier (Horse)	\$15.00
Janitor	\$ 5.00
Jockey (3 year)	\$100.00
Jockey (1 year)	\$80.00
Jockey (Apprentice) (3 year)	\$100.00
Jockey Apprentice) (1 year)	\$80.00
Jockey Agent	\$55.00
Jockey Valet	\$ 5.00
Laborer	\$ 5.00
Official Personnel	
(specify position)	\$ 5.00
Official Veterinarian (3 year)	\$100.00
Official Veterinarian (1 year)	\$80.00
Outrider	\$15.00
Owner (3 year)	\$100.00
Owner (1 year)	\$80.00
Paddock Judge	\$15.00
Pari Mutuel Employee	\$ 5.00
Pari Mutuel Manager	\$55.00
Placing Judge	\$15.00
Photo Employee	\$ 5.00
Plater	\$80.00
Pony Person	\$ 5.00
Private Barns	\$ 80.00
Racing Secretary-Handicapper	\$55.00
Security Chief	\$55.00
Security Staff	\$ 5.00
Simulcast Company	
Employee	\$ 5.00
Simulcast Coordinator	\$55.00
Simulcast Operator	\$80.00
Special Event, 1 or 2 day	\$100.00
Stable Name (3 year)	\$100.00
Stable Name (1 year)	\$80.00
Stable Superintendent	\$55.00
Starter	\$55.00
Starter Assistant	\$15.00
Ticket Seller (Admissions)	\$ 5.00
Timer	\$15.00
Totalisator Employee	\$ 5.00
Totalisator Operator	\$80.00
Track Maintenance,	
Employee	\$ 5.00
Track Physician	\$80.00
Track Superintendent	\$55.00
Trainer (3 year)	\$100.00
Trainer (1 year)	\$80.00
Trainer Assistant	\$15.00
Veterinarian Assistant	\$15.00
Veterinarian, Practicing (3 year)	\$100.00
Veterinarian, Practicing (1 year)	\$80.00
Veterinarian, Racing (3 year)	\$100.00
Veterinarian, Racing (1 year)	\$80.00
Watchman	\$ 5.00

(3) License applicants may be required to furnish to the commission a set(s) of fingerprints and a recent photograph and may be required to be re-fingerprinted or rephotographed periodically as determined by the commission. The requirements for fingerprints may be fulfilled by submission of prints or verification of such, accepted by a member jurisdiction

of the racing commissioners' international, and obtained within two years for annual licenses and four years for three-year licenses. License applicants for owner, trainer or jockey will only need to be fingerprinted upon first application, or if there is a break of three years or more in license continuity. If the commission determines it is necessary, reprinting will be undertaken on the basis of alleged criminal activity on the part of the owner, trainer or jockey.

(4) License applicants for groom, watchman, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

B. MULTI-STATE LICENSING INFORMATION:

Applicants may be permitted to submit an association of racing commissioners international, inc. (RCI) or north American pari mutuel regulators association (NAPRA) multi-state license information form and RCI fingerprint card and thereby obtain a criminal records check that can be used in other jurisdictions.

C. AGE REQUIREMENT:

(1) Applicants for licensing, except owners, must be a minimum of 14 years of age, but no one under the age of 16 may be licensed as a pony person or exercise person.

(2) A licensee must be a minimum of 14 years of age to handle a horse in the paddock.

D. CONSENT TO INVESTIGATION:

The filing of an application for license shall authorize the commission to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications, and to verify information provided by the applicant.

E. CONSENT TO SEARCH AND SEIZURE:

By acceptance of a license, a licensee consents to search and inspection by the commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state and federal law.

F. APPROVAL OR RECOMMENDATIONS BY STEWARDS:

The commission may designate categories of licenses, which shall require stewards' prior approval or recommendation. Prior approval will include exercise riders, pony riders, and apprentice jockeys.

G. EMPLOYER RESPONSIBILITY:

(1) The employment of any unlicensed person under the jurisdiction of the commission is prohibited.

(2) Every employer shall report the discharge of any licensed employee in writing to the stewards, including the person's name and occupation.

H. EMPLOYER ENDORSEMENT OF LICENSE APPLICATIONS:

The license application of an employee must be signed by the employer.

I. FINANCIAL RESPONSIBILITY:

(1) All persons engaged in racing shall maintain financial responsibility in matters pertaining to racing and the Parental Responsibility Act.

(2) Any person licensed by the commission may file a financial responsibility complaint against another licensee. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due in connection with his/her operations as a licensee. A judgement from a civil court, which has been issued within one year of the date of the complaint, may be honored by the stewards as long as at least the defendant is a licensee.

J. LICENSE REFUSAL:

The commission may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

K. LICENSE DENIAL:

(1) The commission may formally deny an application in accordance with these rules.

(2) An application denied, if requested by the applicant, shall be reported in writing to the applicant denied stating the reasons for denial, and the date when a reapplication may be submitted.

(3) An application denied may be reported to the association of racing commissioners international, inc. and north American pari mutuel regulators association whereby other racing jurisdictions shall be advised.

L. GROUNDS FOR REFUSAL, DENIAL, SUSPENSION, OR REVOCATION OF LICENSE:

(1) The commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

(a) has been convicted of a felony;

(b) has been convicted of violating any law regarding gambling or a controlled dangerous substance;

(c) who is unqualified, by experience or otherwise, to perform the activities for which a license is required, or who fails to pass an examination prescribed by the commission;

(d) has failed to disclose or falsely states any information required in the application;

(e) has been found in violation of rules governing racing in this state or other

jurisdictions;

(f) has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(g) has had a license denied, suspended, or revoked by any racing jurisdiction;

(h) is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting. Interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to danger anywhere on the racetrack grounds. The fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

(i) demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused. For the purpose of this sub-section, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within thirty (30) days of the date of the notice, the applicant provides the commission with a certified statement from the department that he/she is in compliance with a judgement and order for support;

(j) is ineligible for employment pursuant to federal or state law concerning age or citizenship.

(2) A license suspension or revocation shall be reported in writing to the applicant and the association of racing commissioners international, inc., whereby other racing jurisdictions shall be advised.

(3) Any license denied, suspended or revoked by the commission pursuant to these rules shall state the time period for the effect of its ruling. When the action is taken for a misdemeanor or felony conviction, the time period shall be the period of the licensee's or applicant's imprisonment; or if not imprisoned, the period of probation, deferral, unless the person can satisfy the commission of sufficient rehabilitation. This rule shall also apply to licensees who voluntarily turn in their license because of, or in anticipation of, a conviction.

M. DURATION OF LICENSE:

(1) All annual licenses issued by the commission expire one year from the last day of the month issued. All triennial licenses expire three years from the last day of the month issued.

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

N. CHANGES IN

APPLICATION INFORMATION:

(1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspension of 10 days or more and license revocations in other jurisdictions.

(2) A child or spouse pass, a change in current legal name, or badge replacement, requires a completed application and payment of a photo badge fee.

O. TEMPORARY LICENSES:

(1) The commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the commission.

(2) The commission may grant an association, who is not conducting a live horse race meeting, a grace period of thirty (30) days to obtain the required licenses for its ~~casino and~~ simulcast employees. An association shall provide to the commission each month, an employment roster for all ~~casino and~~ simulcast employees.

P. MORE THAN ONE LICENSE: More than one license to participate in horse racing may be granted except when prohibited by these rules due to a potential conflict of interest.

Q. CONFLICT OF INTEREST:

(1) The commission may refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the commission or stewards find to be a conflict of interest.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

(3) A person who is licensed as an owner or trainer in a horse registered for racing at a race meeting in this jurisdiction shall not be employed or licensed as a jockey, apprentice jockey; jockey agent; racing official; assistant starter; track maintenance supervisor; jockey room custodian; valet; outrider; racing chemist, testing laboratory employee, or security personnel.

R. LICENSE PRESENTATION:

(1) A person must present an appropriate license or other authorization issued by the commission to enter a restricted area. The commission may issue authorization to the spouse or child of a licensed owner, trainer or jockey to enter a restricted area.

(2) The stewards may require visible display of a license while the licensee is

engaged in the duty for which he/she is licensed and on the association grounds unless the licensee is mounted on a horse.

(3) A license may only be used by the person to whom it is issued.

S. TEMPORARY ACCESS AUTHORITY: Track security may authorize unlicensed persons temporary access to restricted areas. Such person shall be identified and their purpose and credentials verified and approved in writing by track security. Such authorization or credential may only be used by the person to whom it is issued.

T. KNOWLEDGE OF RULES: A licensee shall be knowledgeable of the rules of the commission; and by acceptance of the license, agrees to abide by the rules.

U. PROTECTION OF HORSES:

(1) Each person licensed by the commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

(2) No licensee or other person under the jurisdiction of the commission shall subject or permit any animal under his/her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

V. RESTRICTIONS: Beginning one hour before post time, the use of cellular telephones will be prohibited in the paddock, on the racetrack surface and winner's circle until the last race is official. Cellular telephone use will also be prohibited behind the starting gate during training and racing hours. The association shall be responsible for posting notices of the prohibition in these restricted areas.

[16.47.1.8 NMAC - Rp, 16 NMAC 47.1.8, 03/15/2001, A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 02/14/2002; A, 11/14/2002; A, 03/31/2003; A, 07/15/2003; A, 09/29/2006]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
ALCOHOL AND GAMING
DIVISION**

This is an amendment to 15.10.51 NMAC Section 11, effective 10/15/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

15.10.51.11 SALES TO INTOXICATED PERSONS:

A. No licensee shall sell, ~~or~~ serve, procure or aid in the procurement of alcoholic beverages [to any] to an intoxicated person if the licensee knows or has reason to know that the person [who] is obviously intoxicated. In addition to other commonly recognized tests of intoxication, a blood alcohol content level of .14 or higher on ~~a~~ breath or blood test taken not more than ~~one (1)~~ one and one-half hour or ninety minutes after sale, ~~or~~ service or consumption of alcoholic beverages shall be presumptive evidence that the ~~purchase~~ person was intoxicated at the time of the last sale. For purposes of this rule, a "sale" shall mean the time at which the person actually paid for the last alcoholic beverage served by the licensee to the intoxicated person.

B. No licensee, agent, lessee or employee of the licensee shall consume alcoholic beverages while on duty or be present on the licensed premises while intoxicated with the following exceptions:

(1) owners, employees, licensed wholesalers and licensed retailers may drink alcoholic beverages on the licensed premises before business hours for product training and evaluation purposes but must not become impaired; and

(2) only the licensee, lessee or a designated manager may drink alcoholic beverages during business hours to evaluate beverage quality but must not become impaired.

~~B.~~C. The following practices are prohibited on a licensed premises:

(1) games or contests that involve drinking alcoholic beverages or the awarding of alcoholic beverage drinks as prizes;

(2) the sale or delivery to a person of an unlimited number of alcoholic beverage drinks during any set period of time for a fixed price;

(3) the sale or delivery of two or more alcoholic beverage drinks for the price of one;

(4) allowing any person to have more than two unconsumed alcoholic beverage drinks at any one time;

(5) the sale or delivery of alcoholic beverages by the drink for less than

half the usual, customary, or established price for a drink of that type on the licensed premises;

- (6) the sale or delivery of alcoholic beverages by the drink for less than cost; or
- (7) the advertising of the practices prohibited by this regulation.

~~C.~~D. Nothing contained in this regulation shall prohibit a licensee from:

(1) including one alcoholic beverage drink per person as part of a meal package when approved by the director in writing;

(2) selling wine by the bottle or carafe, or beer in a pitcher, when sold with a meal;

(3) selling wine by the bottle or carafe, or beer in a pitcher, to more than one person;

(4) offering free samples or tastes of alcoholic beverages in quantities of 1.5 ounce or less if the product is wine, beer, or a beverage containing alcohol and at least one other ingredient, or .5 ounce or less if the product is undiluted spirituous liquors, when done to promote a product;

(5) offering free alcoholic beverage drinks to registered guests in its hotel when approved by the director in writing; or

(6) utilizing a "free drink coupon" which is limited to one drink per day per patron or giving a patron a free drink as a gesture of good will or friendship; free drinks as a gesture of good will or friendship may not be advertised and may not be given at any established interval or based on the purchases by the customer;

(7) offering to customers product promotions such as sweepstakes, rebates on non-alcoholic beverage items, or goods that are not or do not include alcoholic beverages.

[3/31/97; 7/15/99; 2/29/00; 15.10.51.11 NMAC - Rn, 15 NMAC 10.5.1.11 & A, 10/15/06]

**NEW MEXICO REGULATION AND LICENSING
DEPARTMENT
ALCOHOL AND GAMING DIVISION**

This is an amendment to 15.10.61 NMAC Section 8, effective 10/15/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

15.10.61.8 SCHEDULE OF PENALTIES:

A. **Violations involving sales to minors or intoxicated persons within a twelve (12) month period.**

Code	Description
90	Sale to intoxicated person
105	Sale to a minor

(1) The first offense will result in a fine ranging from \$1,000 to \$2,000 and suspension of all alcohol sales for one business day.

(2) The second offense will result in a fine ranging from \$2,000 to \$3,000 and suspension of all alcohol sales for seven business days.

~~[(3) The third offense will result in a fine ranging from \$3,000 to \$4,000 and suspension of all alcohol sales for 14 business days.]~~

(3) Three or more offenses shall result in a fine of \$10,000 and revocation of the liquor license.

~~[(4) The fourth offense will result in a fine ranging from \$4,000 to \$5,000 and suspension of all alcohol sales for 30 business days.]~~

~~[(5) Five or more offenses will result in a fine of \$10,000 and revocation of the liquor license.]~~

B. Any combination of three offenses involving sales to minors and/or sales to intoxicated persons occurring within a twelve month period shall result in a fine of \$10,000 and revocation of the liquor license.

~~B.~~C. **Violations involving licensing issues:** Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines within the ranges shown below. Penalties may also include suspension or revocation of the liquor license.

Code	Description	Fine
117	more than one entity profiting	\$2,000 to \$10,000
118	unauthorized entity profiting or operating	\$1,500 to \$10,000
119	failure to report change of ownership or structure	\$250 to \$3,000
135	failure to renew license	\$500 to \$3,000
205	unauthorized transfer of a liquor license	\$3,000 to \$10,000
300	persons prohibited from holding a license	\$3,000 to \$10,000

~~C.~~D. **Illegal sale or possession of alcoholic beverages:** Penalties imposed for the following violations will be determined by the director depending upon the facts and

circumstances of each case and, unless enhanced, will include administrative fines ranging from \$500 to \$10,000. Penalties may also include suspension or revocation of the liquor license

Code	Description
160	sale/possession - illegal

~~[D.]E.~~ **Public nuisance violations:**

Code	Description
125	public nuisance

(1) Penalties imposed for public nuisance violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include the administrative fines and penalties shown below.

(2) The first offense will result in a fine of \$2000. A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the Department receives the citation, or the citation will be referred to a formal hearing.

(3) Failure to correct the violations as agreed will result in an additional fine of \$3000 and immediate suspension of the license until the corrections are completed.

(4) The second offense within a 24-month period will result in a fine of \$4000. A plan of correction of the violations, including timetables for such correction, must be agreed to by the parties within 30 days after the department receives the citation, or the citation will be referred to a formal hearing. After the plan of correction is agreed to, the license will be immediately suspended until completion of the corrections.

(5) The third offense in a 36-month period will result in revocation of the license.

~~[E.]E.~~ **Violations involving commercial gambling:** Penalties imposed for commercial gambling violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include the administrative fines shown below. Penalties may also include suspension or revocation of the liquor license.

Code	Description
40	commercial gambling

- (1) The first offense will result in a fine of \$3,000.
- (2) The second offense will result in a fine of \$4,000.
- (3) The third offense will result in a fine of \$5,000.
- (4) Four or more offenses will result in a fine of \$10,000.

~~[F.]G.~~ **Violations involving club sales provision:** Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines ranging from \$500 to \$5,000. Penalties may also include suspension or revocation of the liquor license.

Code	Description
35	liquor sales to non-members
37	other violations of club sales restrictions

~~[G.]H.~~ **Violations involving other licensing, sales and service matter:** Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines ranging from \$500 to \$5,000. Penalties may also include suspension or revocation of the liquor license.

Code	Description
1	unauthorized package sale
2	unauthorized sunday sale by drink
3	unattended alcoholic beverages
27	purchase from other than a wholesaler
28	alcohol server training program - failure to complete
29	alcohol server training certification - failure to renew
45	removal of open container from licensed premises
66	violation of restaurant license restriction
80	employing an underage person
87	dispenser, drink or price violation
107	minor in possession/consuming
110	minor in restricted area of premises
120	operating hours - improper or illegal
145	unauthorized sale by the drink
146	filling of bottles
155	sale from other than designated premises
157	change of floor plan without approval
180	special dispenser's permit violation
185	unauthorized sunday sale - package
195	failure to obtain sunday sales permit
215	violation of wholesaler license restriction
301	obstruction of the administration of the liquor control act
302	private party violation

~~[H.]I.~~ **Miscellaneous violations of the liquor control act or regulations:** Penalties imposed for the following violations will

be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines ranging from \$250 to \$3,000. Penalties may also include suspension or revocation of the liquor license.

Code	Description
5	advertising - illegal
10	agency responsibility/authority
25	failure to engage in business
26	failure to suspend license
50	unauthorized display of copy/facsimile of license
100	improper lighting of premises
116	unauthorized change of dba name
175	sanitation violation
303	beer keg labeling violation
304	unauthorized change of corporate name
314	required documents on licensed premises

~~F~~J. **Other violations not specifically listed:** Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and may include administrative fines and/or suspension or revocation of the liquor license.

Code	Description
999	miscellaneous

~~F~~K. **Violations involving providers:** Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case and, unless enhanced, will include administrative fines up to \$500.

Code	Description
305	failure to notify of sale, right to own, teach, or use of program to any person
306	providing false information regarding certified program completion
307	failure to conduct the program as certified by the department
308	filing an application for certification of a provider, instructor, or program with false information
310	failure to comply with provisions of alcohol server education article or regulations promulgated there under

~~K~~L. **Violations involving servers:** Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case unless enhanced.

- (1) Failure to have server permit in possession (code 311). Fine up to \$250, suspension up to 14 consecutive days, or both.
- (2) Serving alcoholic beverages without a valid, current server permit (code 312). Fine up to \$500.
- (3) Sale to minor or intoxicated person (code 313):
 - (a) the first offense may result in a fine of up to \$500, a 30-day suspension, or both;
 - (b) the second offense may result in a fine of up to \$500, a 1 year suspension, or both;
 - (c) the third offense may result in a fine, suspension, or revocation.

~~L~~M. **Violations of the alcohol server education article involving licensees:** Penalties imposed for the following violations will be determined by the director depending upon the facts and circumstances of each case unless enhanced.

Code	Description
316	Employing a person without a server permit up to \$500
317	failure to maintain copies of server permits on the licensed premises: \$20 per permit
318	failure to produce a copy of an employee's server permit: \$20 per permit
319	Permitting a person with a suspended or revoked permit to serve alcoholic beverages: up to \$500

~~M~~N. **Suspension of alcoholic beverage sales:**

(1) When suspension of alcoholic beverage sales is a penalty for violation of the Liquor Control Act, suspension will be addressed as follows:

- (a) for a one-day suspension, the licensee will be required to suspend alcohol sales on the same day of the week that the violation occurred; for example, if the violation occurred on a Thursday, the suspension day will be a Thursday;
 - (b) for a suspension of more than one day, the licensee will be required to suspend alcohol sales for consecutive days, beginning on the same day of the week that the violation occurred.
- (2) If the penalty for a violation is suspension, no fine is payable in lieu of suspension.
- (3) Signs provided by the department must be posted on all cash registers and entrances to the restricted area on days that alcohol sales are suspended because of violations of the Liquor Control Act.

[3/31/97; 7/15/99; 2/29/00; 15.10.61.8 NMAC - Rn, 15 NMAC 10.6.1.8 & A, 10/15/06]

**NEW MEXICO
SECRETARY OF STATE**

This is an amendment to 1.10.12 NMAC, Section 18, effective 9-29-06.

1.10.12.18 SECURITY FOR UNVOTED BALLOTS AT ALTERNATE VOTING LOCATION:

A. On the first day of early/absentee voting at the alternate location, the county clerk or his/her authorized deputy shall deliver to the alternate voting location a storage box containing unvoted Marksense ballots locked with two padlocks.

B. In the presence of the alternate voting location precinct board members, the county clerk or his/her authorized deputy shall open the storage box. The precinct board members and the county clerk or his/her authorized deputy shall complete an affidavit that verifies the number of ballots by style that were issued to that early/absentee alternate voting location. Those numbers shall be documented on the affidavit.

C. The county clerk shall distribute one key per judge for the padlocks on the storage box. One key shall be for one padlock and the other key for the other padlock. These judges shall be from different major political parties. The keys shall remain in their custody until the early/absentee voting period ends and then returned to the county clerk.

D. At the end of each day of early/absentee voting, the county clerk or his/her authorized deputy or the presiding judge and the two judges from different major political parties shall verify and document the number of the unvoted Marksense ballots at the alternate location and place them in the storage box. The storage box shall be locked with the two padlocks by the two judges from different major political parties and placed in a locked room at the alternate location along with the early voting tabulator. The presiding judge, county clerk, or his/her authorized deputy shall have sole possession of the key to the locked room. If a location does not have a locked room, the county clerk shall provide a cabinet with a locking device to be placed on the site for the presiding judge to place the storage box.

E. At the beginning of each day until the final day of early/absentee voting at the alternate location, the county clerk, or his/her authorized deputy, or the presiding judge shall unlock the room. In the presence of the presiding judge, the judges from different major political parties who are in possession of the storage box keys shall open the padlocks on the storage box to retrieve the unvoted

Marksense ballots to be used at that early/absentee voting location.

F. The beginning ballot number for that day must match the ending ballot number from the prior day. If it does not match, the county clerk must be notified immediately. No voting at that alternate location shall be allowed until the discrepancy has been resolved to the satisfaction of the county clerk.

G. On the final day of early/absentee voting after the last voter has voted, all unvoted Marksense ballots shall be publicly destroyed. A certificate of destruction must be completed, listing the quantity and numbers of the ballot styles destroyed.

H. All voted Marksense ballots shall remain in the voting tabulator except in accordance with 1.10.12.17 NMAC.

[1.10.12.18 NMAC - N, 9-29-06]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NEW MEXICO HUMAN SERVICES
DEPARTMENT
LOW INCOME HOME ENERGY ASSIS-
TANCE PROGRAM
FINAL REGULATIONS 8.150 NMAC

A public hearing was held on September 6, 2006 to take comments on proposed changes. No one attended the hearing and no written, recorded or email comments were received.

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

For FFY 07 HSD will utilize 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 points for energy cost/burden, income/household size, and certain vulnerable household circumstances, including age and disability. HSD will use 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 will not receive less than 2 points or more than 12 points under this point system.

HSD replaces 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 are 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 changes clarify 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 policy changes have been incorporated into the FFY 2007 LIHEAP plan.

The Department implements these regulations effective October 1, 2006.

Publication of these regulations approved by:

PAMELA S. HYDE, J.D., SECRETARY
HUMAN SERVICES DEPARTMENT

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

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