

**NEW
MEXICO
REGISTER**

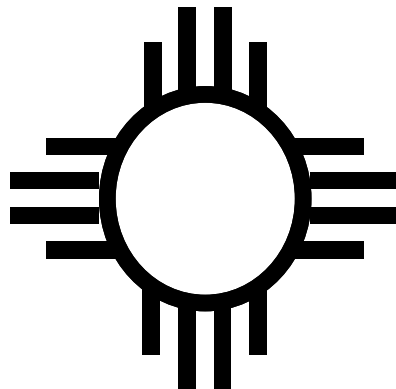


Volume XVIII
Issue Number 15
August 15, 2007

New Mexico Register

Volume XVIII, Issue Number 15

August 15, 2007



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

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Administrative Law Division
Santa Fe, New Mexico
2007

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New Mexico Register

Volume XVIII, Number 15

August 15, 2007

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

On September 12, 2007, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102.

The purpose of the hearing is to receive testimony and exhibits regarding the proposal by the Albuquerque Environmental Health Department, Air Quality Division ("AQD"), to adopt the "Interstate Transport SIP to Satisfy the Requirements of The Clean Air Act 110(a)(2)(D)(i) for Albuquerque-Bernalillo County", which is a revision to the New Mexico State Implementation Plan (SIP) for air quality.

In July 1997, the U.S. Environmental Protection Agency (EPA) issued the National Ambient Air Quality Standards (NAAQS) for 8-hour ozone and particulate matter 2.5 microns or less in diameter (PM_{2.5}). Section 110(a)(1) of the Clean Air Act (CAA) requires states to submit SIPs within 3 years following the promulgation of new standards. Implementation of the standards was delayed, however, due to subsequent litigation. On March 10, 2005, EPA entered into a Consent Decree with Earth Justice to address the interstate transport of these pollutants, a required SIP component, under CAA Section 110(a)(2)(D)(i) and on April 25, 2005, published a "Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM 2.5" [70 FR 21147]. The April 25, 2005, finding, effective May 25, 2005, started a 24-month clock for EPA to either issue a final Federal Implementation Plan (FIP) to address the requirements of Section 110(a)(2)(D)(i) or to approve a SIP that addresses these requirements.

In consultation with the EPA, Region 6 and the New Mexico Environment Department, the AQD is proposing this SIP revision,

which does the following:

- * Demonstrates adequate provisions to prevent emissions from Bernalillo County from interfering with attainment or maintenance of the NAAQS in another state;
- * Shows that Bernalillo County does not interfere with another State's program to prevent significant deterioration of its air quality; and
- * Discusses Bernalillo County's influence on visibility.

The Air Board is the federally-delegated air authority for Albuquerque and Bernalillo County and has responsibility for overseeing compliance with the federal Clean Air Act within Bernalillo County.

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

Anyone intending to present technical testimony is asked to submit a written Notice of Intent (NOI) before 5:00pm on Wednesday, September 5, 2007 to: Attn: September Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The NOI shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on September 5, 2007. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed SIP revision at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DIS-

ABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULEMAKING NOTICE

On Thursday, August 23, 2007, beginning at 9:00 a.m., at the State Bar of New Mexico, 5121 Masthead, NE, Albuquerque, NM 87199, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations; Incentive Licenses Drawing; Presentation of 4th Quarter and Annual 2007 Fiscal Year Depredation Reports; Farm Bill Conservation Program Effects on Fish and Wildlife in New Mexico; Texas Hornshell Recovery Plan; General Public Comments; Proposed Approach and Associated Rule Development for Development of New Antelope Private Land-Use System (A-Plus) and Associated Rule Development; Proposed Extension of the Mountain Lion Control Program to Protect State-Endangered Desert Bighorn Sheep Populations (19.31.11.12, 13.31.11.14, and 19.31.11.17, NMAC); Special Hunt Application Fee Level for 2008-2009 License Year; Future Recruitment and Retention of Hunters; Legislative Initiatives Discussion for 2008 Session; Closed Executive Session; Notice of Commission Contemplated Action; Land Conservation Appropriation Update; and Approval of Fiscal Year 2009 Operating and Capital Project Budget Request.

The following rules are open for public comment and consideration for adoption by the Commission:

- * Proposed Changes to the Fisheries Rule, 19.31.4, NMAC;
- * Mid-cycle Amendments to Turkey Rule, 19.31.16, NMAC, and Deer Rule, 19.31.13, NMAC;
- * Rules 19.31.18, NMAC, Big Game Enhancement Authorization Packages and 19.31.19, NMAC, Governor's Hunting and Fishing Authorizations, for Adoption; and
- * Changes to Private Land Entry and Sportsmen Enjoyment Program Rule 19.34.7, NMAC, (now called Open Gate Program).

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on August 15, 2007, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be **State Coverage Insurance (SCI)**.

New Mexico Human Services Department is issuing emergency regulation updates to the State Coverage Insurance (SCI) program to accomplish the adult expansion of Medicaid for adults at or below 100% of the federal poverty level (FPL), as funded and authorized by legislative appropriation for FY 08, in order to make full use of the available funding. Updates clarify that premium payments will not be required for eligible adults who are determined by the Income Support Division to be at or below 100% FPL.

Interested persons may submit written comments no later than 5:00 p.m., August 15, 2007, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Interested persons may also address comments via electronic mail to: Magdalena.Romero@state.nm.us. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on September 17, 2007, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be **Home and Community Based Waivers**.

As authorized in the Deficit Reduction Act of 2005 (DRA 2005) and signed into law February 8, 2006, several changes to New Mexico's Institutional Care and Home and Community Based Waiver (HCBW) Medicaid program rules are mandated. The proposed rule changes reflect the corresponding Institutional Care rule changes that will be made in the near future and upon which HCBW rules have always been based.

Interested persons may submit written comments no later than 5:00 p.m., September 17, 2007, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

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

NEW MEXICO BOARD OF INTERIOR DESIGN

Legal Notice

Notice is hereby given that the New Mexico Interior Design Board will convene a Rule Hearing to amend:

Title 16, Chapter 42, Part 1 Interior Designers, General Provisions
Title 16, Chapter 42, Part 2 Interior Designers, Code of Professional Conduct
Title 16, Chapter 42, Part 3 Interior Designers, Licensing Requirements
Title 16, Chapter 42, Part 4 Interior Designers, Complaints
Title 16, Chapter 42, Part 5 Interior Designers, Fees
Title 16, Chapter 42, Part 6 Interior Designers, Continuing Education Guidelines

This Hearing will be held at the State Capitol Building, 425 Don Gaspar, Room 309, Santa Fe, NM, on September 28, 2007 at 9:30 a.m.

Following the Rule Hearing the New Mexico Interior Design Board will convene a regular meeting. In addition to the open meeting, the Board may go into Executive Session to consider issuance, suspension, renewal, or revocation of licenses.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-4865.

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 two weeks prior to the rule hearing/board meeting to allow time for distribution to the Board members. Individuals planning on testifying at the hearing must provide copies of their testimony also two weeks prior to the rule hearing/board meeting.

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) 476-4865, no later than one week before the rule hearing/board meeting.

**NEW MEXICO
COMMISSION OF PUBLIC RECORDS**

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, August 28, 2007, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette Solano at 476-7902 by August 20, 2007. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

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

Amendment

1.18.630 NMAC ERRDS, Human Services Department

Repeal

1.17.205 NMAC JRRDS, Supreme Court Law Library
1.18.333 NMAC ERRDS, Taxation and Revenue Department

New-Replacement

1.17.205 NMAC JRRDS, Supreme Court Law Library
1.18.333 NMAC ERRDS, Taxation and Revenue Department

**NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO
SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF AMENDING
13.10.17 NMAC, GRIEVANCE
PROCEDURES RULE**

DOCKET NO. 07-00323-IN

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

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance (“Superintendent”) pursuant to NMSA 1978, Section 59A-2-9, proposes to amend 13.10.17 NMAC, Grievance Procedures Rule. The Superintendent, being otherwise fully advised, **FINDS and CONCLUDES THAT:**

1. In April of 2007, the Superintendent appointed a task force, composed of a wide range of stakeholders and regulators, to provide guidance to him and the Insurance Division Staff (“Staff”) regarding the current status of the Managed Health Care Rule, 13.10.13 NMAC, the Grievance Procedures Rule, 13.10.17 NMAC, and the regulation of various forms of health care plans offered by insurers and other state-regulated entities, including all insurers that utilize preferred provider arrangements in their health plans.

2. The task force met on three occasions and came to a consensus that it was important to first amend the rules governing managed health care plans to provide state-managed and regulated grievance procedures for all insured health plans that in some way managed the delivery and payment of health care services. While some members of the task force

noted that current rules already provide for the regulation of all managed health care plans in New Mexico, others wanted more clarity.

3. Interested members of the task force agreed to meet with Staff to provide further guidance and comments in forming an amended Managed Health Care Rule, 13.10.13 NMAC, with notice of rulemaking to occur within 12 months of this notice.

4. Based on discussions and recommendations that arose from these meetings, and in consultation with Staff, the Grievance Procedures Rule, 13.10.17 NMAC, should be amended immediately.

5. The Grievance Procedures Rule, 13.10.17 NMAC, should be amended to include the following

a. Statutory authority and definition of a health benefits plan derived from the Preferred Provider Arrangements Law, NMSA 1978, Paragraphs 3(D) and 7 of Section 59A-22A.

b. Definition of “traditional fee-for service indemnity benefit.”

c. Provision of consumer education brochures with oversight by the Superintendent.

d. Clear division of administrative grievances from those involving adverse decisions.

e. Expedited administrative review of rescission decisions, to include the documents and information considered by the insurer in arriving at the decision, and a notice of rescission in the form approved by the Superintendent.

f. Addition of on-line Complaint Form for grievances.

g. Provision of specific timelines where rule was previously vague or unclear.

h. Inclusion of “Review of Termination of Coverage - Form of Complaint” from the Managed Health Care Rule, 13.10.13.18 NMAC in the Grievance Procedures Rule, 13.10.17.41 NMAC.

COPIES OF PROPOSED RULEMAKING ARE AVAILABLE:

a. by downloading from the Public Regulation Commission’s website, www.nmprc.state.nm.us, then clicking on “Proposed Rules,” “Insurance,” Docket No. 07-00323-IN , “IN THE MATTER OF AMENDING 13.10.17 NMAC, GRIEVANCE PROCEDURES RULE ;”

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission’s Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for

\$60 made payable to the Public Regulation Commission to cover the cost of copying; or c. for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

IT IS FURTHER ORDERED that an **informal public hearing** pursuant to Section 59A-4-18 NMSA 1978 be held on Wednesday, **September 5, 2007 at 9:30 a.m.** in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rulemaking. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file **written comments** on the proposed rulemaking **on or before August 24, 2007**. An original and (2) two copies of written comments and suggested changes concerning the proposed amendment to the Grievance Procedures rule must be mailed or delivered to: NM Public Regulation Commission – Docketing Division, ATTN: Bettie K. Cordova, RE: Proposed Amended Rules in Docket No. 07-000__-IN, Public Regulation Commission's Docketing Office, Room 406, PO Box 1269, Santa Fe, NM 87504-1269. Telephone (505) 827-4526. If possible, please also e-mail a copy of written comments as an attachment in Microsoft Word format to Melinda.Silver@state.nm.us. Comments

will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

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

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ms. Cordova at (505) 827-4426. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should be addressed to Ms. Cordova.

DONE, this 18 day of July 2007.

**NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

MORRIS J. CHAVEZ, Superintendent of Insurance

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY**

TRAINING AND RECRUITING
DIVISION
Law Enforcement Academy

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

The New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting to include a Public Hearing on Thursday, September 13, 2007 beginning at 9:00 a.m., located at the New Mexico Highland University Student Center Building, Senate Chamber, 2nd Floor, 903 Baca Avenue, Las Vegas, New Mexico. The Public Hearing will include 10.29.7 NMAC 2008 – 2009 In-Service Training Requirements. The proposed change will include the language, "All New Mexico certified law enforcement officers shall receive a minimum of forty (40) hours of training bi-annually." Also 10.29.9 NMAC Police Officer. The proposed change will include the language, "Rejection of applicant and subsequent psychological evaluation within twelve months."

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

**NEW MEXICO RACING
COMMISSION**

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

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the Boardroom, 4900 Alameda Blvd NE, Albuquerque, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Tuesday, August 21, 2007. The public session will begin at 9:30 o'clock a.m. on Tuesday, August 21, 2007. The Commission will consider adoption of the proposed amended rules for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.1.9 NMAC (regarding rulings); 15.2.3.8 NMAC (regarding safety reins); 15.2.4.8 NMAC (regarding

claims); 15.2.5.13 NMAC (regarding equipment); 15.2.6.9 NMAC (regarding penalty recommendations); and 16.47.1.10 (regarding trainers.)

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

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

Julian Luna
Agency Director

Dated: July 30, 2007

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Tax Administration Act

3.1.12.13 NMAC Section 7-1-17.1
NMSA 1978

(Collection of Community Debt Against a Spouse or Former Spouse)

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

Motor Vehicle Code

18.19.5.7 NMAC Section 66-5-54 NMSA
1978

(Definitions)

Tax Administration Act

3.1.4.10 NMAC Section 7-1-9 NMSA
1978

(Due Dates and Timeliness)

3.1.4.12 NMAC Section 7-1-13 NMSA
1978

(Extensions)

The New Mexico Taxation and Revenue

Department proposes to repeal the following regulations:

Special Fuels Supplier Tax Act

3.16.109.8 NMAC Section 7-16A-10
NMSA 1978

(Calculation of Special Fuel Excise Tax Liability)

3.16.109.9 NMAC Section 7-16A-10
NMSA 1978

(Proof Satisfactory to the Department)

3.16.109.10 NMAC Section 7-16A-10
NMSA 1978

(Deduction - Sales to Other Suppliers)

3.16.109.11 NMAC Section 7-16A-10
NMSA 1978

(Indirect Sales to the United States, The State of New Mexico, Indian Nations, Tribes or Pueblos or for Export)

3.16.109.12 NMAC Section 7-16A-10
NMSA 1978

(Deduction- Sales to a Non-United States Signatory of the North Atlantic Treaty)

3.16.109.13 NMAC Section 7-16A-10
NMSA 1978

(Special Fuel Used in School Buses)

Gross Receipts and Compensating Tax Act

3.2.220.13 NMAC Section 7-9-62 NMSA
1978

(Construction of Irrigation Pipelines)

The proposals were placed on file in the Office of the Secretary on August 1, 2007. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about October 15, 2007.

A public hearing will be held on the proposals on Thursday, September 20, 2007, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before September 20, 2007.

3.1.12.13 COLLECTION OF COMMUNITY DEBT AGAINST A SPOUSE OR FORMER SPOUSE: The secretary or secretary's delegate may decline to bring an action or proceeding to collect community debt against a spouse or former spouse where to do so would be inequitable.

A. In the case of community tax debt arising from a jointly-filed income tax return, the secretary or the secretary's delegate may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of a taxpayer who is granted relief by the internal revenue service (IRS) pursuant to 26 U.S.C. Section 6015. Where relief is granted in writing by the IRS, the spouse who received such relief may provide a copy of the IRS's determination and request that the secretary cease any collection activity against that spouse or former spouse to the extent such relief was allowed by the IRS. The secretary or the secretary's delegate may decline to pursue collection activity against a spouse or former spouse for community debt while an application for such relief is pending before the IRS, but the failure to seek or obtain such relief shall not preclude the secretary or secretary's delegate from declining to bring an action or proceeding against a spouse or former spouse for collection of a community debt where to do so would be inequitable. The secretary or the secretary's delegate shall consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

(1) Did the spouse or former spouse have knowledge of the tax liability at the time that liability arose?

(2) Did the spouse or former spouse have a meaningful opportunity to contest the assessment of tax at the time the assessment was made?

(3) Has the spouse or former spouse cooperated with the department in collection and compliance efforts?

(4) Can the state protect its interests without pursuing active collection efforts against the spouse or former spouse, including collection efforts against the other spouse or former spouse?

(5) Has the spouse or former spouse benefited from the transfer of significant amounts of property from the other spouse or former spouse?

(6) Was the spouse or former spouse given an opportunity to participate in the business decisions of the household during the periods when the debt arose?

B. In addition to the facts and circumstances listed in Subsection A above, in the case of a community debt arising from the conduct of a business within the state, including taxes collected under the combined reporting system, the secretary or the secretary's delegate shall also consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

(1) Did the spouse or former spouse participate in the conduct of the

business, including responsibility for payment of taxes and other debts?

(2) Has the spouse or former spouse benefited from the conduct of the business?

(3) Did the spouse or former spouse know that the other spouse or former spouse had a business?

C. The secretary or the secretary's delegate shall weigh all applicable factors when determining whether to decline to bring an action or proceeding. No one factor shall be considered determinative. Each of these factors may be given different relative weight, depending on the facts and circumstances of each case, therefore the presence of a majority of said factors tending to indicate "innocent spouse" in a particular case may not necessarily indicate that the taxpayer in question qualifies as an "innocent spouse" for New Mexico tax purposes.

D. Nothing in this regulation shall be construed to apply to offsets of refunds or credits to collect on community debts.

E. The secretary and the secretary's delegate has discretion to allow relief under this section. A spouse or former spouse who believes he or she is entitled to relief under this section may petition for such relief to the secretary in writing. The spouse or former spouse has the burden of proof in establishing his or her entitlement to the relief requested. A spouse or former spouse who believes that the request for relief under this section has been improperly denied may protest that decision under Section 7-1-24 NMSA 1978.

[3.1.12.13 NMAC - N, XXX]

18.19.5.7 **DEFINITIONS:** **[COMMERCIAL DRIVER'S LICENSE - DEFINITIONS:]**

A. As used in regulations under the provisions of the New Mexico Commercial Driver's License Act:

[A-] (1) "commercial driver's license" means a license issued by a state or other jurisdiction which authorizes the holder to operate a commercial motor vehicle;

[B-] (2) "commercial motor vehicle" means a motor vehicle of a type used in commerce:

[H+] (a) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

[Z+] (b) if the vehicle is designed to transport sixteen or more passengers, including the driver; or

[Z+] (c) if the vehicle is transporting hazardous materials and is required to be placarded pursuant to applicable law;

[E-] (3) "combination vehicle" means a power or tractor unit with one or more semi-trailers, trailers or semi-trailers

converted to trailers by means of a converter gear;

[D-] (4) "disqualified" means a driver who has had the qualification to drive a commercial motor vehicle removed and whose New Mexico commercial driver's license is canceled; for purposes of this definition and Section 66-5-68 NMSA 1978, "canceled" shall mean that the commercial driver's license is in "revocation" as that term is defined in Subsection B of Section 66-5-1 NMSA 1978, and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed; and

[E-] (5) "resident" means a person who intends to reside in New Mexico evidenced by registration to vote or other action acceptable to the motor vehicle division.

B. As used in Subsection C of Section 66-5-6 NMSA 1978, "healing arts practitioner" means a person licensed to practice in this state medicine, osteopathic medicine, oriental medicine, chiropractic, or similar medical services for human beings. The term also includes a person licensed to practice in this state as a certified nurse practitioner, clinical nurse specialist, physician assistant or osteopathic physician assistant.

[2/28/90, 8/20/93, 10/31/96; 18.19.5.7 NMAC - Rn & A, 18 NMAC 19.5.7, 9/14/00; A, XXX]

3.1.4.10 **DUE DATES AND TIMELINESS**

A. **FILING RETURNS - DUE DATE:** A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

B. **TIMELINESS OF ELECTRONIC TRANSMISSIONS:** Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the

department was initiated on or before the last date prescribed for filing the notice, return or application.

[B-] C. **DETERMINATION OF TIMELINESS:**

(1) Notices, returns, applications and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment.

(2) If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(3) A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

[E-] D. **ILLEGIBLE POST-MARK:**

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection [E] D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for filing the notice, return or application or making the payment.

~~[D.]~~ **E. SATURDAY, SUNDAY OR HOLIDAY DUE DATE:**

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state of New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

~~[E.]~~ **E. STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:**

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks,

any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

~~[F.]~~ **G. "RECEIVED BY THE DEPARTMENT" DEFINED:**

(1) Unless the secretary by instruction or other directive permits or requires otherwise, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 means received at the Santa Fe headquarters of the department during the department's normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 includes such locations or times.

~~[G.]~~ **H. "BANKING DAY" DEFINED:**

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:

(a) When Memorial Day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

I. TIMELINESS OF ELECTRONIC PAYMENTS:

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic

payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who relies upon the applicability of Section 7.1.13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making the payment.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn & A, 3 NMAC 1.4.10, 12/29/00; A, XXX]

3.1.4.12 **EXTENSIONS**
A. **GOOD CAUSE FOR EXTENSIONS:**

(1) "Good cause" for which the secretary or secretary's delegate may grant extensions is construed strictly. Such extensions for no more than a total of 12 months will be granted only in situations in which the taxpayer shows a good faith effort to comply with the statute.

(2) Example 1: If the taxpayer operates a multistate business and the filing of returns for New Mexico taxes at the statutory due date would cause the taxpayer unreasonable bookwork and recordkeeping, an extension will be given favorable consideration by the secretary or secretary's delegate.

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return, an extension will be given favorable consideration.

(4) Example 3: If the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to compute taxes before the due date, an extension of time will be given favorable consideration.

(5) Example 4: If the taxpayer's accountant has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to complete the return or to procure the services of a person to complete the return before the due date, an extension will be given favorable consideration.

(6) Example 5: If the taxpayer is awaiting the outcome of a court or administrative proceeding or the action of the internal revenue service on a federal tax claim, an extension will be given favorable consideration provided that the extension does not contravene the time limits established by this statute or other New Mexico or federal statute.

B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:

(1) The procedures in Subsection B of 3.1.4.12 NMAC apply only to extensions which the applicant must request; these procedures do not apply to automatic extensions under Subsection E of 3.1.4.12 NMAC.

(2) Any taxpayer may request an extension of time in which to file a tax return. Such a request must be in writing and must be received by the department on or before the date that the tax is due. The application for extension must clearly set forth:

(a) the tax or tax return to which the extension, if granted, will apply;

(b) a clear statement of the reasons for the requested extension; and

(c) the signature of the taxpayer or the taxpayer's authorized representative.

(3) The extension will not be granted unless a reason satisfactory to the secretary or secretary's delegate appears in the request.

(4) An approved extension will ordinarily be granted for a period of 30 days. A request for longer extensions must state the reason why the 30 days is insufficient. Additional 30-day extensions or a longer extension may be granted by the secretary or secretary's delegate for up to a maximum aggregate extension of 12 months.

(5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business, P will be unable to complete all of P's customers' tax returns before the due date. P submits to the secretary a request for an extension of time on behalf of each customer whose return P is unable to complete. The request will be denied. It is irrelevant to consider whether or not P's request states a good cause because an extension will not be granted unless the taxpayer's personal necessity is the basis of the request. In this case, each of the taxpayers must request an extension and give "good cause" for this privilege.

(6) Example 2: On April 20, 20XX, T is granted a 30-day extension for payment of March, 20XX, taxes due April 25, 20XX. On May 20, 20XX, T, showing good cause, requests a further extension of the March taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following 20XX.

C. EXTENSIONS

GRANTED WHEN NO LIABILITY HAS ARISEN:

(1) An extension may be granted even though the tax liability has not yet arisen. The following examples illustrate the application of Subsection E of 7-1-13 NMSA 1978.

(2) Example 1: B's business is destroyed by flood on June 1, 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25, 20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.

(3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, 20XX taxes for a period of nine months to September 25 of the year following 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted was until August 25 of the year following 20XX.

D. AUTOMATIC EXTENSION FOR REPORT OF FEDERAL FORM 990-T INCOME: A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income ~~and to pay the tax owed~~. Interest will accrue during the period of the automatic extension.

E. AUTOMATIC FEDERAL INCOME TAX EXTENSIONS - GENERAL:

(1) An automatic extension of time to file a federal income tax return as provided in the Internal Revenue Code shall be considered to be an approved federal extension of time and shall be sufficient to extend the time for filing the New Mexico income tax return. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then a copy of the federal form claiming the automatic extension for federal tax purposes shall be attached to the taxpayer's New Mexico income tax return and shall serve as the basis for extending the time for filing the New Mexico return to the date of filing the federal return under the automatic extension provided by the Internal Revenue Code. If it is not necessary to submit a form to the

internal revenue service to claim an automatic extension for filing the federal income tax return, then the due date for filing the New Mexico income tax return shall be extended automatically to the same date as the extension for the federal return unless the federal extended date is more than ~~four~~ six months from the original due date, in which case the extended due date for the New Mexico return shall be ~~four~~ six months after the original due date.

(2) If the taxpayer desires additional time beyond the automatic extension for filing the New Mexico income tax return, a written request for the additional time must be made by the taxpayer prior to the expiration of the extended federal date. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal return, then a copy of the federal form requesting the automatic extension for filing the federal return must accompany the taxpayer's request for additional time to file the New Mexico income tax return beyond the extended federal date. The total combined extension for filing the New Mexico return shall not exceed 12 months beyond the actual due date for that return.

F. INVALIDATION OF FEDERAL EXTENSION: If an extension of time to file a federal income tax return is invalidated for any reason for federal income tax purposes, it is also invalidated for New Mexico income tax purposes.

G. FAILURE TO FILE, PAY OR PROTEST BY EXTENDED DUE DATE:

(1) The term "extended due date" means:

(a) for income tax returns, the latest date to which the due date for filing the New Mexico income tax return has been extended by either an extension granted by the internal revenue service with respect to the taxpayer's federal income tax return or by an extension granted by the department; and

(b) for all other tax returns, the latest date to which the due date for filing the tax return has been extended by the department.

(2) A taxpayer becomes a delinquent taxpayer if the taxpayer fails by the extended due date either to file the required return and, if a tax is due, to pay the tax due or to protest in accordance with Section 7-1-24 NMSA 1978 the payment or filing requirement.

[7/19/67, 11/5/85, 3/31/86, 8/22/88, 8/15/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.12 NMAC - Rn & A, 3 NMAC 1.4.12, 12/29/00; A, 12/30/03; A, XXX]

3.16.109.8 ~~[CALCULATION OF SPECIAL FUEL EXCISE TAX LIABILITY: In computing the special fuel excise~~

tax due, a special fuel excise tax taxpayer, in addition to the deductions provided in Section 7-16A-10 NMSA 1978, may deduct from the total amount of special fuel received in New Mexico during the tax period, the amount of special fuel sold or delivered when the receipt or use of the special fuel is subject to gross receipts tax under the provisions of either Section 7-16A-8 NMSA 1978 or Section 3-16-102.9 NMAC. [RESERVED]
[2/1/93, 12/31/96, 12/31/97; 3.16.109.8 NMAC - Rn, 3 NMAC 20.10.8 & A, 6/14/01; Repealed, XXX]

3.16.109.9 ~~[PROOF SATISFACTORY TO THE DEPARTMENT:~~

~~A. For exports on or after June 1, 1997, proof satisfactory to the department of the export of special fuel consists of a manifest or bill of lading showing the amount of special fuel, the name and address of the person to whom the special fuel is sent and the destination outside New Mexico. The person exporting special fuel must also comply with the requirements of Subsection A of Section 7-16A-10 NMSA 1978.~~

~~B. Proof satisfactory to the department of sale to the United States, a NATO force, the state of New Mexico (including its agencies, instrumentalities and political subdivisions), or an Indian nation, tribe or pueblo or any agency or instrumentality thereof shall be furnished to the department on request. Proof includes documentation, such as contracts, purchase orders and invoices, showing that the purchaser was the United States, a NATO force, the state of New Mexico, or an Indian nation, tribe or pueblo or an agency or instrumentality thereof.~~

~~C. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the special fuel was sold. [RESERVED]
[2/1/93, 12/31/96, 12/31/97; 3.16.109.9 NMAC - Rn, 3 NMAC 20.10.9 & A, 6/14/01; Repealed, XXX]~~

3.16.109.10 ~~[DEDUCTION SALES TO OTHER SUPPLIERS:~~

~~A. Special fuel received by one supplier and sold to another supplier may not be deducted from the amount of special fuel received in New Mexico, even though the second supplier is bonded and registered, because the second supplier did not "receive" special fuel within the meaning of the act.~~

~~B. Example: A, a registered special fuel supplier in New Mexico, received one thousand (1,000) gallons of special fuel in June. B, also a registered special fuel supplier located in the same city as~~

~~A, needed one thousand (1,000) gallons of special fuel of the type A had received and arranged to purchase the one thousand (1,000) gallons from A in that same month. A may not deduct the one thousand (1,000) gallons from the amount of special fuel A received in June. B is not liable for tax on this special fuel because B did not receive it. [RESERVED]~~

~~[2/1/93, 12/31/96; 3.16.109.10 NMAC - Rn, 3 NMAC 20.10.10 & A, 6/14/01; Repealed, XXX]~~

3.16.109.11 ~~[INDIRECT SALES TO THE UNITED STATES, THE STATE OF NEW MEXICO, INDIAN NATIONS, TRIBES OR PUEBLOS OR FOR EXPORT:~~

~~A. The tax consequences of sales of special fuel to the United States, the state of New Mexico, or Indian nations, tribes or pueblos or for export are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the special fuel to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser.~~

~~B. Example: X, a supplier, received one hundred (100) gallons of special fuel in May, paid the special fuel excise tax and resold the special fuel to Y, a wholesaler. Y then in the same month of May sold the special fuel to the United States. If Y furnishes proof satisfactory to the department to X, X may either deduct the one hundred (100) gallons from the amount of special fuel received for that month of May or may elect to take the deduction in any subsequent month in which special fuel is received. Proof satisfactory to the department of Y's sale to the government is required to be retained by both X and Y for at least three years from the end of the calendar year in which the special fuel was sold to the United States.~~

~~C. Example 2: X, a supplier, received one hundred (100) gallons of special fuel in May paid the special fuel excise tax and resold the special fuel to Y, a wholesaler, who resold it to Z, a dealer. Z sold ten (10) gallons to the United States in that same month of May when a United States government vehicle filled up at Z's station. Z reports to Y that this amount of special fuel has been sold to the United States. If Y furnishes proof satisfactory to the department to X, X may deduct ten (10) gallons from the amount of special fuel received in that May or any subsequent month in which special fuel is received. Proof satisfactory to the department of Z's sale to the United States is required to be retained by X, Y and Z for at least three~~

~~years from the end of the calendar year in which the special fuel was sold.~~

~~D. Example 3: X, a supplier, received one hundred (100) gallons of special fuel in May, paid the special fuel excise tax and resold the special fuel to Y, a wholesaler. That same month Y delivers the one hundred (100) gallons of special fuel to a customer in Texas. If Y furnishes proof satisfactory to the department to X, X may deduct one hundred (100) gallons from the amount of special fuel received in May or any subsequent month in which special fuel is received. Proof satisfactory to the department of Y's export is required to be retained by both X and Y for at least three years from the end of the calendar year in which the sale was made. [RESERVED]~~

~~[2/1/93, 12/31/96; 3.16.109.11 NMAC - Rn, 3 NMAC 20.10.11 & A, 6/14/01; Repealed, XXX]~~

3.16.109.12 ~~[DEDUCTION SALES TO A NON UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY:~~

~~A. For purposes of Section 3.16.109.12 NMAC:~~

~~(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the North Atlantic Treaty;~~

~~(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty; and~~

~~(3) "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.~~

~~B. Pursuant to Article XI, Section 11 of the North Atlantic Treaty, special fuel sold to a NATO force may be deducted from the total amount of special fuel received in New Mexico.~~

~~C. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, special fuel sold to a member of a NATO force for the private use of that member and not for the use of the NATO force are not deductible and are subject to the special fuel excise tax.~~

~~D. Section 3.16.109.12 NMAC is retroactively applicable to sales on or after July 1, 1995. [RESERVED]
[12/22/95, 12/31/96; 3.16.109.12 NMAC - Rn, 3 NMAC 20.10.12 & A, 6/14/01; Repealed, XXX]~~

3.16.109.13 ~~[SPECIAL FUEL USED IN SCHOOL BUSES: Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax. [RESERVED]~~

[3.16.109.13 NMAC - N, 10/15/02; Repealed, XXX]

3.2.220.13 **[CONSTRUCTION OF IRRIGATION PIPELINES:**

~~A. The receipts from building irrigation pipelines for persons engaged in the business of farming or ranching are receipts from performing a construction service. The receipts from the sale of completed construction projects are subject to the gross receipts tax.~~

~~B. The deduction provided for by Section 7-9-62 NMSA 1978 does not apply to irrigation pipe which becomes an ingredient or component part of a completed construction project.] [RESERVED]~~

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.13 NMAC - Rn, 3 NMAC 2.62.13 & A, 6/14/01; Repealed, XXX]

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

This is an amendment to 8.17.2 NMAC, Section 10, effective 8/15/07.

8.17.2.10 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC Governing Background Checks and Employment History Verification provisions as promulgated by the children, youth and families department. All non-licensed child care providers must adhere to these provisions to maintain their registration status.

B. Child abuse and neglect screens. All adult members of the registered provider's household, the registered provider as primary caregiver, and all second caregivers, must undergo a child abuse and neglect screen. Any person who is present in the registered provider's home for significant periods while children are in care, or who commences being present in the registered provider's home for significant periods, may be required by the department to obtain a child abuse and neglect screen.

C. Criminal records checks.

~~(1) If the registered provider is caring only for relative children, the registered provider as primary caregiver must undergo a state criminal records check. Second caregivers who are caring only for relative children also must undergo a state criminal records check.~~

~~(2) If the registered provider is caring for any non relative children, the registered provider as primary caregiver must undergo federal as well as state criminal records checks. Second caregivers who are caring for non relative children also must undergo a federal as well as a state criminal records check.]~~ All registered providers and second caregivers must undergo both a state and federal criminal records check in order to provide care for both relative as well as non-relative children. Registered providers and second caregivers must submit the required fee with their state and federal criminal records checks application.

D. The registered provider must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 08/31/06; A, 8/15/07]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, Sections 6, 8, 9, 10, 12, 13 and 15, effective August 15, 2007.

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or "in plant training," strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program's inception in 1972, more than ~~[600 companies and 35,000]~~ 800 companies and 40,000 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

A. Company eligibility: Three categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators and film post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. To be considered for JTIP, non-retail service companies must export a service rather than import a customer. The third category -film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion

requirements, refer to "company qualifications and requirements" in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP participants.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least 90% of the county median wage to qualify in urban locations and \$8.00 in rural locations. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit. An additional incentive is offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

C. Trainee eligibility: To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be currently domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence), and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A significant portion of trainee wages (50% - ~~[65%]~~ 75%) for up to six months of initial training).

(b) A significant portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses (50% - ~~[65%]~~ 75%) with a cap of 5% of total funding for wages.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are eligible for an additional 5% wage reimbursement above the standard rates.

(3) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

E. Program management and administration: General management of the Job Training Incentive Program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board has adopted this policy manual to ensure the program supports the development of New Mexico's economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the Job Training Incentive Program is the responsibility of the JTIP staff in the New Mexico economic development department. One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements: The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators and film post

production companies are eligible under the manufacturing category. The second is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service rather than import a customer. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. JTIP will not consider contractors which rely on income that is already in the state of New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, or telemarketing are not eligible for JTIP funds. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). A company whose employees are compensated solely on piecework is also not eligible. The board uses the north American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Start-up companies are also eligible. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the three prior years. The company must meet or exceed the average employment level for the past three years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program previously, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand accord-

ing to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials may submit a business plan, evidence of signed contracts, and/or pro forma financial statements which would substantiate their business expansion.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP lay-offs exceeds \$100,000 of reimbursement. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a separation of an employee from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for JTIP.

B. Position qualifications and requirements: The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract

positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested.

C. Trainee qualifications and requirements: The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within ~~four~~ six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the program. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees hired after April 8, 2005 must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or Industrial Development Training Program are not eligible to participate again with the same company.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications ~~will~~ should remain fixed during the program ~~unless otherwise amended and approved by the JTIP board~~. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to still be reimbursed for the employee's training.

(8) Trainees' start dates ~~should~~

must occur after the actual contract date. ~~[Trainees hired before the contract date only qualify for reimbursed wages if they were hired less than two months before the board meeting at which the company is seeking funding. Funding for trainees hired before the contract date is limited to hours worked after the contract begins. The number of hours worked before the contract date will be subtracted from the total number allowed for the position. The number of trainees hired before the board meeting may not exceed 25% of the number for which funding is requested.]~~

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a permanent full-time employee before the end of the JTIP approved training hours.

(b) The trainee must receive the same wages and major medical, dental, and vision benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007]

5.5.50.9 ELIGIBLE TRAINING PROGRAMS:

A. The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

B. The types of training

projects eligible under the Job Training Incentive Program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

C. On-the-job training: Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) and/or "hands-on" skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O*NET job description, and training units. Each unit will include core content and/or objectives, methods and materials, and requested hours. A more detailed description of the training plan requirements is included in the *JTIP proposal guide*.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation. Please refer to the sample contract in the appendix.

D. Custom training provided by a New Mexico post-secondary public educational institution: Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP participants are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution and/or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the

program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Reimbursement for classroom training will be at a maximum rate of \$35 per hour of training per trainee with a cap of \$1,000 per employee. Tuition reimbursement is not eligible for JTIP funding.

(5) Facilities rental outside a public educational institution and equipment rental and/or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation.

[5.5.50.9 NMAC - N, 03-15-2006; A, 08-15-2007]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses are eligible for reimbursement through JTIP.

(1) A significant percentage of trainee wages (50% - [~~70%~~] 80% for up to six months of initial training).

(2) A percentage of travel expenses associated with training (50% - [~~65%~~] 75%).

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

B. Standard reimbursement rates for wages and travel range from 50% to [~~65%~~] 75%. Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are also eligible for an additional 5% wage reimbursement. If a company is participating in other job reimbursement training programs such as the Workforce Investment Act (WIA), the combined reimbursement to the company may not exceed 100%.

C. The Job Training Incentive Program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of reimbursement ranges from 50% to [~~65%~~] 75%, depending on the business location. An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetcenter.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	[320 160	[7.00 8.00	[6.00 Below 7.50	[40] 20	[8] 4
1a	<u>Little or no preparation needed</u>	<u>Below 4.0</u>	320	9.00	7.50	40	8
2	Some preparation needed	4.0 to < 6.0	[640 480	[9.00 10.50	[7.00 8.25	[80] 60	[16] 12
2a	<u>Some preparation needed</u>	<u>4.0 to < 6.0</u>	640	12.00	9.00	80	16
3	Medium preparation	6.0 to < 7.0	960	[12.00 15.00	[9.00 11.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	[16.00 18.00	[11.50 13.00	130	26
	Align with HWJTC	Additional 5%	1040	19.25	13.50	130	26

(3) The JTIP board will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board awards training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate num-

ber of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at 50% for all eligible training hours. Urban communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203).

(b) Companies located in rural areas, which is defined as any area 10 miles outside the urban areas listed above are reimbursed at ~~[60%]~~ 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at 70% for all eligible training hours.

~~(d)~~ (d) Companies located in an economically distressed area in New Mexico are eligible for ~~[65%]~~ 75% reimbursement. To receive a ~~[65%]~~ 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or downsizing, a decline in population, loss of gross receipts or other factors.

~~(e)~~ (e) Companies located on Native American reservations are eligible for ~~[65%]~~ 75% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit are eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area.

Reimbursement for positions which meet these requirements is 55% in an urban location, ~~[65%]~~ 70% in a rural location, 75% in frontier, and ~~[70%]~~ 80% in an economically distressed area and on Native American land. Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIA, the combined reimbursement to the company may not exceed 100%.

E. Reimbursement for classroom training: Payment for classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. ~~[The rate of reimbursement to the institution is 100%.]~~ The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. *No training equipment may be purchased or rented using JTIP funds.*

F. Travel cost and per diem reimbursement for trainees and trainers: Trainee travel and per diem may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel and per diem will be consistent with the rates as designated by location (50% for urban, ~~[60%]~~ 65% for rural, 70% for frontier, and ~~[65%]~~ 75% for economically distressed and Native American areas). Travel and per diem must be pursuant to ~~[the DFA Rule 95-1]~~ 2.42.2 NMAC of the department of finance and

administration's regulations governing the Per Diem and Mileage Act. Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007]

5.5.50.12 PROCEDURAL

OVERVIEW: The procedure for completing a funding proposal is explained in detail in the *JTIP proposal guide*. The procedure for program participation once funding is approved is described in the *JTIP program guide*. This summary is intended to provide a general overview of the process. Please refer to the appropriate guide when completing a proposal for funding and administering the program once it is funded. JTIP staff is available for assistance with these processes.

A. Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than one month before the JTIP board meeting at which the proposal will be considered for funding. Early submission is required to allow JTIP staff and board members to review the materials and request clarification or additional information if needed. Ten copies of the proposal will be requested once the proposal has been reviewed by staff and refined, if necessary.

B. Board meetings are generally held on the second Friday of each month. The alternate date, which is used when a meeting on the second Friday is not viable (a quorum cannot be achieved, holiday, etc.) is the third Friday of the month.

C. The contract start date is the date of the board meeting at which funding was approved. The contract end date is one year after the start date. All claims for reimbursement must be submitted and the final audit must be completed ~~[before the contract end date]~~ within 30 days of the contract end date.

D. The contractual agreement will be prepared and mailed out to the company within 15 working days after the board approval date. A sample contract is included as an appendix to this manual. Companies are encouraged to review the contract before applying for funding, as the contract cannot be edited.

E. The company must return the signed contractual agreement to the economic development department within 15 business days from the issue date.

F. Eligible job openings must be registered with the New Mexico ~~[department of labor]~~ department of workforce solutions. The company is also encouraged to advertise through the placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is

available from the New Mexico higher education department (<http://hed.state.nm.us>).

G. The company must hire trainees within ~~[four]~~ six months of the contract start date. This timing ensures that trainees who are eligible for six months of training will complete the program before the contract end date ~~[and allows time for the final audit]~~.

H. The company must provide the JTIP staff with a ~~[schedule]~~ roster of new hires at the end of the ~~[four]~~ six month hiring period. When the company submits the list, the allocation of funds for their contract will be adjusted to reflect the number of people hired. The board will not entertain extensions to the contract.

I. Claims for reimbursement should be submitted as each participant completes training.

J. Each project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys.

K. The company must arrange for a final audit by an independent accounting firm registered with the New Mexico regulation and licensing department, board of accountancy. A list of approved auditors is available from JTIP staff or from (www.saonm.org). A specific amount for the audit is included as part of the proposal approval. Any amount in excess of this amount is the responsibility of the company. The audit must be completed before the end of the contract. Companies should keep this deadline in mind when selecting an auditor.

L. All claims for reimbursement must be submitted and the final audit must be completed before the contract end date. The final claim for reimbursement should be submitted with the completed final audit. The final claim will be paid once the final audit has been received and approved favorably.

M. Yearly follow-ups are conducted to show effectiveness of the program, including surveys to address retention rates of program participants.

N. Companies that fail to comply with all established operating requirements ~~[and]~~, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

[5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007]

5.5.50.13 AMENDMENTS [AND EXTENSIONS]:

A. Amendments to the contract may be allowed in special circumstances. Amendments may be required by administrative changes (such as job classification changes, company name change, ~~[time extension]~~, etc.) and changes to the number of participants funded. Companies

must submit an amendment request, along with supporting documentation to justify the amendment to the job training incentive program board. All amendment requests must include 1) a letter describing the change requested and the reason for the change, 2) a completed amendment form, and in some cases a current financial statement. A copy of the amendment form is included in the *JTIP program guide*. If a company requests an amendment increasing the original contract by more than ~~[20%, a new proposal must be submitted.]~~ 50% or \$100,000, whichever is the lesser amount of the two, a new proposal must be submitted. However, if the company submits a new proposal within six months of the original proposal which is for an amount greater than would normally be allowed for amendment, the company may submit a shorter modified proposal.

B. Amendment requests which are administrative in nature and do not impact the original budget amount by more than ~~[\$5,000]~~ \$10,000 (above or below) may be executed by JTIP staff. Examples include job classification changes, company name change, wage ranges, and time extensions to the contract. ~~[Staff may execute amendments without board approval to allow completion of the training.]~~ The program manager and division director or his/her designee will approve all staff executed contract changes. Otherwise, the JTIP board must approve all contract amendments.

C. All project amendment requests must be submitted in writing one month prior to the board meeting. The board meetings are held on the second Friday of every month, with the third Friday occasionally used as an alternate. Amendments must begin within thirty days from the approval date.

[5.5.50.13 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006; A, 08-15-2007]

5.5.50.15 GLOSSARY:

A. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for ~~[65%]~~ 75% reimbursement. To receive a ~~[65%]~~ 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or downsizing, a decline in population, loss of gross receipts or other factors.

B. Expanding company: An expanding company is an existing business which requires additional employees

or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the three prior years. (Refer to "peak employment.")

C. High wage job tax credit: The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2009, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

D. Manufacturing: Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

E. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/epcd/naics02/naicod02.htm.

F. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

G. New company: A new company is defined as a company not cur-

rently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

H. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

I. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at www.onetcenter.org.

J. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from three previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

K. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last three years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

L. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

M. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

N. Urban communities: An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those communities

are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

O. Frontier: A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

P. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Tarrant counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

Q. Rural: Any area located 10 miles or more outside communities defined as urban in the JTIP policy. [5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

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

19.31.5.1 ISSUING AGENCY: New Mexico Department of Game and Fish. [19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 8-15-2007]

19.31.5.2 SCOPE: Hunters of Upland Game. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19. [19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 8-15-2007]

**19.31.5.3 S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to

establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish. [19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 8-15-2007]

19.31.5.4 DURATION: August 15, 2007-March 31, 2008. [19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 8-15-2006]

19.31.5.5 EFFECTIVE DATE: August 15, 2007 unless a later date is cited at the end of individual sections. [19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 8-15-2007]

19.31.5.6 O B J E C T I V E : Establishing seasons on Blue-winged teal, Green-winged teal, Cinnamon teal, pheasant, Blue grouse, Lesser prairie-chicken, Montezuma quail, Northern bobwhite, Scaled quail, Gambel's quail, Mourning dove, White-winged dove, Eurasian-colored dove, Band-tailed pigeon, Sandhill crane, Abert's squirrel, Red squirrel, and setting falconry seasons. [19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 8-15-2007]

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

B. "Area GS-1-experimental" (GS-1E) shall mean the area bounded by the following: beginning in Santa Fe at the U.S. 285/I-25 intersection, north on I-25 to N.M. 518, north on N.M. 518 to N.M. 75, west on N.M. 75 to N.M. 68, south on N.M. 68 to U.S. 285, and south on U.S. 285 to I-25.

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

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

south on U.S. 285 to the New Mexico-Texas border, east to U.S. 54.

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

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

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

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

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

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

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

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

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

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

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

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

Q. "Established road" is defined as follows:

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

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

R. "Estancia valley sandhill crane hunt area (EV)" shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

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

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

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

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

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

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

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

Z. "Non-toxic shot" shall mean that non-toxic shot approved for use

by the U. S. fish and wildlife service.

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

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

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

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

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

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

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

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

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

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

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

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

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

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-15-2007]

19.31.5.8 LICENSE AND APPLICATION REQUIREMENTS:

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

(1) For the hunting of **blue grouse, pheasant, quail, and squirrel**; valid upland game licenses are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or non-resident small game, and temporary small game 4-day licenses. A habitat stamp is required for those hunting on US forest service and bureau of land management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans. An additional permit is required for hunting grouse in GS-1E (see Subsection B of 19.31.5.7 NMAC and Subsection K of 19.31.5.8 NMAC).

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

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

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

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

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

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

(4) All applications must be

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

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

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

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

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

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

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

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

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

E. Requirements and permits for band-tailed pigeon: Hunters and falconers shall have in their possession a Band-tailed pigeon hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office only. Applicants shall submit their name, address, and the number of their general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or

handicapped general hunting and fishing, or small game, or non-resident small game, and temporary small game 4-day licenses. Permits shall be free of charge and there shall be an unlimited number of permits available for issue.

F. Requirements and permits for the eastern sandhill crane hunt: Hunters and falconers shall have in their possession a federal Sandhill crane hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail only to the Santa Fe office. Applicants shall submit their name, address, and the number of their general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or non-resident small game, and temporary small game 4-day licenses. There shall be an unlimited number of federal permits available for issue.

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

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

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

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

I. Requirements and permits for Valencia county pheasant hunt:

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

(2) Landowners in Valencia county will maintain the ability to hunt and allow hunters on their private property. Landowners will be required to provide proof of ownership and sufficient acreage to accommodate a safe hunt at the northwest (Albuquerque) area office prior to the hunt

date. Once sufficient proof has been established, the landowner will be issued unlimited application forms to distribute to hunters they choose. All applications must be obtained from the landowner. Applications for the private land Valencia county pheasant hunt will be unlimited, must be obtained from the landowner and submitted only to the northwest (Albuquerque) area office. Valid hunt codes are listed in Subsection A of 19.31.5.12 NMAC.

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

K. Requirements and permits for blue grouse: For the hunting of blue grouse in GS-1E, in addition to a valid upland game license (see Paragraph (1) of Subsection A of 19.31.5.8 NMAC) a free grouse permit obtained from Department offices shall be required. [19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-15-2007]

19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:

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

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

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

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation. There shall be no daily bag or possession limit for Eurasian-collared dove.

C. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any upland game that are illegally obtained.

D. Use of bait:
(1) It shall be unlawful for anyone to take or attempt to take any protected species, other than quail, by use of baits as defined in Subsection H of 19.31.5.7 NMAC.

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

E. Live animals: It shall

be unlawful to use live animals as a blind or decoy in taking or attempting to take any protected species.

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

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

H. Legal sporting arms and ammunition:

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

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

(b) bows and arrows; and

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

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

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

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows and arrows; and

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

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

(a) on all state game commission owned lands,

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

(c) all waterfowl species.

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

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

J. Proof of species or sex:

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

(2) The head or a leg of each pheasant taken must remain attached to the bird until the bird has arrived at the personal abode of the possessor or storage facility.

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

the possessor or storage facility.

(4) All Eurasian-collared dove in possession must have an identifiable feathered wing attached until the bird has arrived at the personal abode of the possessor or storage facility. Any harvested dove without an identifiable wing attached, until the bird has arrived at the personal abode of the possessor or storage facility, will count towards the daily dove bag and possession limits (see Subsection B of 19.31.5.9 NMAC).

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

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

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

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

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

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

(d) the date and place of the donation.

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

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

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

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

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

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

(a) description of the skin, claws, or feathers involved;

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

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

(d) the date and place of the transaction.

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

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

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

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

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

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

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

(6) **Handicapped license:**

(a) Shooting from a vehicle: The holder of a handicap license is authorized to shoot at and kill protected species during

their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is permanently disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

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

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

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

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

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

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

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

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

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

(7) That portion of the **Bernardo WMA** south of US-60 is open to teal hunt-

ing each day of the September Teal season.

(8) The entire **La Joya WMA** and **Salt Lake WMA** shall be open to teal hunting each day of the September teal season.

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

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

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

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

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

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

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

(4) Sugarite canyon state park.

(5) Valle Vidal area.

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

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

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

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

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

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

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-15-2007]

SPECIES, SEASONS DATES, AND DAILY BAG LIMITS:

2007-2008 season: all dates are 2007 unless otherwise specified

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG LIMIT
Teal	central flyway portion of state	Sept. 15-23	4 (singly or in aggregate)
Pheasant	statewide, excluding Valencia county	Dec. 6-9	3 (males)
Special Permit Required *See information; 19.31.5.12 NMAC	Valencia county	Dec. 8	3 (males)
Youth-only pheasant Hunt *See information; 19.31.5.12 NMAC	Seven Rivers WMA and Casa Colorada WMA	Dec. 1	3 (males)
Pheasant (special permit) *See information; 19.31.5.12 NMAC	Seven Rivers WMA, Casa Colorada WMA and W.S. Huey WMA	Dec. 8	3 (males)
Blue grouse	GS-1 GS-1E GS-2	Sept. 1-Oct. 15 Aug. 25-Oct. 15 Oct. 1-31	3 3 3
Lesser prairie-chicken	SEASON CLOSED		
Quail: Gambel's, scaled, Northern bobwhite and Montezuma (Mearn's)	Statewide	Nov. 15 - Feb. 15, 2008	15 (singly or in aggregate; no more than 5 shall be Mearn's)
Sandhill crane *Special permit required; See information Subsection G of 19.31.5.8 NMAC	MRGV EV MRGV MRGV Southwest Southwest MRGV	Oct. 27-28 Oct. 27-Nov. 4 Nov. 17-18 Dec. 8-9 Oct. 27-Nov. 4 Jan. 5-6, 2008 Jan. 12-13, 2008	2 (4 per season) 3 2 (4 per season) 2 (4 per season) 3 3 (6 per season) 2 (4 per season) (possession -6, regular and special seasons combined)
Sandhill crane *Special permit required; See information Subsection F of 19.31.5.8 NMAC	Eastern	Oct. 31- Jan. 31, 2008	3
Band-tailed pigeon *Special permit required; See information Subsection E of 19.31.5.8 NMAC	southwest BPHA regular BPHA	Oct. 1-20 Sept. 1-20	5 5
Dove Mourning and White -winged dove	north zone south zone	Sept. 1-Oct.30 Sept. 1-30 & Dec. 1-30	15 (singly or in aggregate) 15 (singly or in aggregate)
Eurasian-collared dove	Statewide	Sept. 1-Dec. 30	No bag or possession limit (see Subsections B and J(4) of 19.31.5.9 NMAC)
Tree squirrel	GS-1 GS-1E GS-2 S-3 S-4	Sept. 1-Oct. 31 Aug. 25-Oct. 31 Oct. 1-Nov. 30 Sept. 1-Oct. 31 Sept. 1-Oct. 31	8 (singly or in aggregate)

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-15-2007]

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

A. Eight separate Sandhill crane seasons are scheduled with up to a total of 430 permits available. The permits will be allocated by season as follows: 2007-2008 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
October 27-28	SCR-0-101	MRGV	75
October 27 though November 4	SCR-0-102	EV	50
November 17-18	SCR-0-103	MRGV	70
December 8-9	SCR-0-104	MRGV	60
October 27 though November 4	SCR-0-105	SW	60
January 12-13, 2008	SCR-0-106	MRGV	60
January 5-6, 2008	SCR-0-107	SW	50
October 27 though December 30	SCR-0-108	EV Falconry	5

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

[19.31.5.11 NMAC - Rp, 19.31.5.11 NMAC, 8-15-2007]

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

A. Special permit pheasant hunts will be allocated by season as follows:

(1) 2007-2008 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
December 1	PHE-0-001	Youth-only Casa Colorado WMA	15
December 1	PHE-0-002	Youth-only Seven Rivers WMA	40
December 8	PHE-0-003	Casa Colorado WMA	10
December 8	PHE-0-004	Seven Rivers WMA	65
December 8	PHE-0-005	W.S. Huey WMA	40
December 8	PHE-0-006	Valencia County landowner permits	Unlimited

(2) Hunters may possess a Valencia County landowner permit in addition to another special permit pheasant hunt.

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-15-2007]

19.31.5.13 FALCONRY SEASONS:

A. Open areas and season dates. 2007-2008 season, all dates are 2007 unless otherwise specified.

(1) The season for pheasants, Blue grouse, quail, Abert's squirrel, and red squirrel shall be statewide and shall be open September 1 through February 29, 2008.

(2) The season for dove shall be statewide and shall be open September 1 through November 12 and November 27 through December 30.

(3) The season for Band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2008 for the southwest hunting area.

(4) The season for sandhill crane shall be in the eastern New Mexico sandhill crane hunt area and shall be open from October 17 through January 31, 2008.

(5) The season for sandhill crane in the Estancia Valley shall be October 27 through December 30.

(6) The season for any duck species and American coot during the September teal season within the central flyway portion of the state shall be open from September 15-23.

B. Daily bag and possession limits.

(1) Daily bag limits shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate) and possession limits shall be: pheasant-6; Blue grouse-6; quail 30 (singly or in the aggregate); tree squirrel-16 (singly or in the aggregate) as listed herein.

(2) Daily bag limit for mourning and white-winged dove, ducks, Band-tailed pigeon, and sandhill crane shall be 3 birds (in the aggregate) and possession limits shall be 6 birds (in the aggregate) as listed herein. There is no daily bag or possession limit on Eurasian-collared dove (see Subsection B and Paragraph (4) of Subsection J of 19.31.5.9 NMAC).

(3) Season limit for sandhill crane in the Estancia Valley shall be 9 birds.

C. Provisions for possession: The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert's squirrels and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those species listed herein that were legally taken during the open falconry season.

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-15-2007]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.31.3 NMAC, Section 11 effective August 15, 2007.

19.31.3.11 RESTRICTIONS:

A. One license per big game species per year: It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the specified dates, legal sporting arms, bag limit and area. Except that a permit or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU or AMU, that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

C. Improper license and permit: Any person who attempts to capture or shoot, hunts, kills, injures or takes, in any manner any game animal, game bird or game fish other than in accordance with the specified hunt code or dates, legal sporting arm, bag limit allowance or area designated on a license or permit issued by the department to that person is deemed to be hunting without a proper license as required by 17-3-1 unless otherwise exempted by a valid commission rule.

[C-] D. Transfer of permits or licenses: The director may grant the transfer of a hunting license or permit once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has; died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

[D-] E. Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has; died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting.

[E-] E. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a person who has been qualified through a nonprofit wish-granting organization. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit wish-granting organizations that identify and submit recipients for donated licenses or permits. **However, an once-in-a-lifetime licensee may be reinstated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit wish granting organization. Donation on a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.**

[F-] G. More than one application: It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation. Exception: An individual may apply for both a population reduction hunt on public or private land and a special drawing hunt. However, an applicant shall follow the application procedures outlined in 19.31.3.8 NMAC.

[G-] H. Handicapped fishing or handicapped general hunting license qualifications: To hold a handicapped fishing or handicapped general hunting license, the individual must be a resident of New Mexico and must show proof of a severe disability by reason of one or more physical disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end-stage renal disease, or who has a combination of permanent disabilities which cause comparable substantial functional limitation. Reasonable accommodation will be made, relating to these licenses, upon request.

[H-] I. Mobility impaired (MI) deer, elk, oryx, or antelope license qualifications: To hold a mobility impaired deer, elk, oryx, or antelope license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which limits their activ-

ity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility.

(1) Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

(2) All current MI card holders shall have their card expire on March 15, 2007 and must resubmit on the proper department form and obtain department approval prior to being eligible to apply for MI designated hunt codes.

[I-] J. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. Applicant for firearm hunts must provide hunter education certificate number on application.

[J-] K. An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

[K-] L. Military only hunts: Applicants must be full time active military and proof of military status must accompany application or, if applying online, must be forwarded to the department by the application deadline date.

[L-] M. Penalty assessments: When a person is issued a penalty assessment citation for fishing without a license or hunting small game without a license, the citation will serve as a special permit for that specific activity for fifteen (15) calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within thirty (30) days of the date of citation issuance.

[M-] N. Iraq/Afghanistan veteran oryx hunts: Only New Mexico residents who served on active duty military during the Iraq or Afghanistan conflict are eligible to apply for Iraq/Afghanistan veteran oryx licenses. Proof of active duty military assignment in Iraq or Afghanistan must accompany application or, if applying online, must be forwarded to the department by the application deadline date.

[N-] O. Mentor/youth only hunts: Applications for mentor/youth only hunts are limited to one adult (18 years and older) and up to 3 youth applicants (under 18 years as of opening day of the hunt). Youth applicants for any mentor/youth only

firearm hunts must provide hunter education certificate number on application.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 12-30-04; A, 6-30-05; A, 9-30-05; A, 10-31-05; A, 3-31-06; A, 6-15-06; A, 4-1-07; A, 8-15-07]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 22, effective August 4, 2007

19.31.4.22 EMERGENCY ORDER FOR FISH SALVAGE: Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2007, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within Comanche Creek in Taos county at the USFS road 1950 crossing at the Little Costilla confluence and all tributaries of Comanche Creek upstream of that point. The department will be conducting a fish restoration project requiring removal of all fishes. Bag limits on all trout will be removed. Tackle restrictions will remain in place. This relaxation will go into effect at 12:01 a.m., August 4, 2007, and will remain in effect through 11:59 p.m., August 7, 2007.

[19.31.4.22 NMAC - N/E, 8-4-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.460 NMAC, Sections 11, 12, 13, 16, 19, 24, 25, 30, 31, and 32 effective 08/15/2007.

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

A. Categories of waivers: Work program participation shall be waived for a participant:

(1) who is completely disabled, either temporarily or permanently, as determined by ISD in accordance with 8.102.420.11, 8.102.420.12, and 8.102.420.13 NMAC; IRU shall make the determination whether a waiver should be granted;

(2) who is 60 years of age or older; or

(3) who provides the sole care for a disabled ~~person~~ household member as defined in 8.102.420.11 NMAC.

(a) In order to show that the participant is a necessary primary caretaker, the participant requesting the waiver must demonstrate that the participant cannot be out of the home for the number of hours necessary to meet program participation requirements.

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

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

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

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

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

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

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

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

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

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

(8) A participant who demonstrates by reliable medical, psychological or mental reports, court orders, police reports, or personal affidavits if no other evidence is

available, that family violence or threat of family violence effectively bars the participant from employment. IRU shall make the determination whether a waiver should be granted.

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

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

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

(10) A participant may demonstrate good cause of the need for the exemption. A good cause waiver may exist and shall be determined by IRU based on clients existing condition(s). Good cause is not considered to exist for failure to meet any of the above criteria.

B. Waiver determination: The determinations required under 8.102.460.11 NMAC shall be made by IRU based upon information provided by the participant requesting the waiver.

(1) It shall be the responsibility of the participant requesting a waiver to provide all information necessary to the caseworker. A waiver shall not be granted until the participant provides all the information needed to make the waiver determination.

(2) A participant who has not provided all the necessary information to make a determination shall be subject to meeting work program participation requirements.

C. Temporary waiver: A person who has provided all information necessary to make the determination shall be temporarily granted the waiver pending final determination by IRU.

D. Complete disability and special needs and considerations: The caseworker shall be responsible for

explaining work program requirements and waivers of work program participation, including possible accommodations for special needs or considerations.

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

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

(3) Incapacity review unit (IRU) responsibility: The IRU shall have sole responsibility for reviewing all medical reports and making a determination that a participant is waived due to disability, that there are limitations requiring special needs or considerations, or that full participation is possible.

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

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

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

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

E. Modified work participation agreement

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

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

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

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

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

(2) Modified work participation

agreement: The modified work participation agreement shall include at least twenty hours in qualified primary work activities, unless the participant is temporarily exempted from full participation. The balance of the hours in the participation standard shall be considered as secondary activities.

(a) Secondary activities may include all those activities identified as qualified secondary activities.

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

(c) Required secondary activities may include, but are not limited to, additional screening and assessment to assist the participant in identifying barriers to work; a family assessment; referrals to treatment or counseling facilities; requiring the participant to schedule and attend doctor's appointments, mental health counseling, speech and physical therapy; substance abuse treatment; or continuing participation in services already being provided.

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

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

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

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

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

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

(4) Work program contractor:

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

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

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

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

(iv) inform the participant that the day after the day the work program contractor refers the participant back to the caseworker begins the thirty day time period for providing medical documentation to the caseworker.

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

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

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

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

F. Waived participation limited requirements

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

(2) Component activities: For

those participants who have been determined to have a limited work capacity the following activities, but not limited to, may be allowable as the primary participation requirements through the duration of the waiver such as:

- (a) substance abuse services;
- (b) mental health services;
- (c) pursuit of disability benefits;
- (d) job readiness or education directly related to employment;
- (e) ESL courses for those participants who do not speak English; or
- (f) residence in a domestic violence shelter or receiving counseling or treatment or participating in a criminal justice activity directed at prosecution of the domestic violence perpetrator for no longer than 24 weeks.

(3) Review and documentation:

At time of waiver review documentation of a participant's compliance with prescribed limited participation activity requirements shall be provided to establish on going requirements and to evaluate further conditions or circumstances that department shall consider to determine continued waiver status.

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

8.102.460.12 NMW PARTICIPATION REQUIREMENTS:

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

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

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

(3) Work participation agree-

ment (WPA): The WPA shall be provided to ISD no later than 15 calendar days from date of approval, in accordance with the provisions 8.102.460.16 NMAC. Failure to have an agreement submitted to ISD no later than 15 calendar days from the date of approval of assistance subjects the benefit group to payment sanctioning.

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

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

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

C. Reopened cases:

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

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

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

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

(2) A participant who fails to meet the participation requirements or to timely report work activity attendance each month may subject the benefit group to payment sanctioning.

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

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

8.102.460.13 PARTICIPATION STANDARDS:

A. General: Participation standards are divided into primary, second-

ary and total activity requirements. Participation activities may be met only through those activities listed in Subsection A of 8.102.460.19 NMAC.

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

(2) A participant subject to participation shall maintain and provide verification of participation at a rate at least equaling the applicable participation standard to avoid being sanctioned.

B. Calculating hours:

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

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

(3) For paid work activities:

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

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

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

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

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

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

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

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

(6) A participant may be granted no more than 10 excused absences during a one year period and no more than two in any month. The prescheduled hours of participation for the day of absence shall be included in the participation requirement.

(7) Non-paid work experience and community service participation hours are limited to the fair labor standards act (FLSA) rules.

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

(1) For the purpose of this determination, a two-parent benefit group shall be considered to exist when both parents of

any child included in the benefit group live in the home with the child and are included in the benefit group.

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

D. Two-parent families:

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

(1) ~~[Able-bodied two-parent benefit group]~~ Two-parent participation standards:

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

(b) Where both parents are mandatory and federally funded child care is not available, the total participation standard shall be 40 hours per week in primary work activities. Each parent must participate at least 20 hours a week in primary work activities.

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

(3) Where one parent in a two-parent benefit group is a recipient of SSI, the benefit group shall be considered as a single-parent benefit group, and the mandatory parent shall be subject to the appropriate participation standard for the single-parent benefit group.

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

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

(6) Where a two-parent benefit

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

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

E. Single-parent benefit group:

(1) Single parent with a child age six or older: Each mandatory participant in a single-parent or caretaker relative benefit group shall participate in primary work activities at least 20 hours a week.

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

~~(3) Single parent under age 20:~~
~~A single parent under age 20 shall be considered to meet the single parent's total program participation standard if the single parent is maintaining satisfactory attendance in a secondary school or its equivalent during the month. Satisfactory attendance shall be based on the requirements of the school and on enrollment in sufficient course work to assure completion of secondary education before turning age 20.]~~

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

(a) reports on a bi-weekly basis satisfactory attendance at a secondary school or in a GED program; the single head of household must be enrolled in enough hours to ensure graduation prior to turning age 20 for attendance to be deemed to be meeting the participation standard as specified above based on the child's age; or

(b) participates in education directly related to employment for at least the average number of hours per week specified above based on the child's age.

[8.102.460.13 NMAC - Rp/E, 8.102.460.13 NMAC, 07/16/2007; A, 08/15/2007]

8.102.460.16 WORK PARTICIPATION AGREEMENT:

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

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

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

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

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

(4) be signed by the participant; and

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

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

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

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

(3) no later than ~~[60]~~ 30 calendar days from approval for benefits.

D. Review and approval:

(1) ISD shall approve the WPA if:

(a) the proposed activities meet the minimum work program participation standards; and

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

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

(2) ISD shall deliver or mail a copy of the reviewed agreement to the participant no later than three working days after receipt of the proposed WPA.

E. Denial:

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

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

F. Conciliation and sanction:

(1) A participant shall be required to enter into a conciliation if the participant refuses or fails to complete a WPA. The conciliation process is available once for

work programs during each occurrence of participation and not again available until there has been a break of 12 months between occurrences of participation when a participant fails or refuses or fails to comply with the IRP process shall be provided in accordance with 8.102.620 NMAC.

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

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

8.102.460.19 QUALIFIED WORK ACTIVITIES:

A. Primary work activities: For purposes of meeting the participant's participation standard primary work activities are defined in sections 8.102.460.20 NMAC thru 8.106.420.29 NMAC.

B. Secondary work activities: A secondary activity shall include any primary activity that is not already being credited toward the participant's participation standard as a primary work activity or an activity as defined in section 8.102.460.30 NMAC thru 8.102.460.32 NMAC.

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

~~(1) reports on a bi-weekly basis satisfactory attendance at a secondary school or in a GED program; the single head of household must be enrolled enough hours to ensure graduation prior to turning age 20 for attendance to be deemed to be meeting the participation standard; or~~

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

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

~~(2) participates in education~~

directly related to employment for at least the average number of hours per week specified in 8.102.460.13 NMAC.

D. Limited work requirement: Based on participant circumstances and in order to address barriers a limited participation requirement shall be determined as the best placement as per Subsection [D] E of 8.102.460.11 NMAC. [8.102.460.19 NMAC - Rp/E, 8.102.460.14 NMAC, 07/16/2007; A, 08/15/2007]

8.102.460.24 JOB SEARCH AND JOB READINESS ASSISTANCE:

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

B. General:

(1) Countable hours for looking for job openings, making contact with potential employers, applying for vacancies and interviewing for jobs, and in labor market training will be determined by actual hours spent on these activities.

(2) Job search hours are countable in meeting primary work activity participation requirements for no more than six weeks during a given federal fiscal year, and they are countable for no more than four consecutive weeks in a row.

C. Component activities:

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

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

(2) Participation in a certified alcohol or drug addiction program where a health or social professional certifies that such treatment or activity is necessary.

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

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

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

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

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

(6) Domestic violence

(a) Participants who have significant barriers to employment because of domestic violence or abuse may participate

in domestic violence work activity to receive services focused on assisting the participant to overcome the effects of domestic violence and abuse. Participants participating in this activity may reside in a domestic violence shelter or may receive services while residing elsewhere. The primary focus of such services is on helping the participant to move into employment. Domestic violence is a temporary work-readiness activity limited to no more than 24 weeks.

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

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

(i) emergency shelter or re-location assistance;

(ii) child care;

(iii) personal, family and career counseling; and

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

D. Supervision and documentation:

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

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

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

8.102.460.25 WORK EXPERIENCE:

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

B. General

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

(2) Sponsoring agencies:

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

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

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

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

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

C. Component activities:

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

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

(2) **Trainees:** Trainee activity

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

(a) Training is similar to that given in a vocational school.

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

(c) Trainees do not displace regular employees.

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

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

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

D. Supervision and documentation:

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

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

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

(b) **Two-parent:** The initial calculation of participation requirement hours is the same as a single parent, in order to calculate hours for each parent divide by two.

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

8.102.460.30 JOB SKILLS TRAINING:

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

B. General: Secondary work activities are countable towards the total work participation standard for a participant who has completed the primary work activity hours.

C. Component activities: Participation in the following is considered as meeting work participation requirement hours when combined with a primary work

activity:

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

(2) post-secondary education; or

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

D. Supervision and documentation:

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

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

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

(4) Countable work participation hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.

[8.102.460.30 NMAC - N/E, 07/16/2007; A, 08/15/2007]

8.102.460.31 EDUCATION RELATED TO EMPLOYMENT:

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

B. General: NMW participants may engage in this activity if they have not received a high school diploma or a certificate of high school equivalency or needs specific education related to current employment or job offer. Secondary work activities are countable towards the total work participation standard for a participant who has completed the primary work activity hours.

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

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

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

(3) adult basic education (ABE) to assist participants who need classes pro-

viding basic educational training before working on a general equivalency degree (GED); or

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

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

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

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

D. Supervision and documentation:

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

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

[8.102.460.31 NMAC - N/E, 07/16/2007; A, 08/15/2007]

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

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

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

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

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

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

(1) ABE or ESL; or

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

D. Supervision and documentation:

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

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

(3) Countable hours shall be determined by actual hours spent in class time and completion of supervised study hours to include holidays and excused absences.

[8.102.460.32 NMAC - N/E, 07/16/2007; A, 08/15/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.200.430 NMAC, Section 16, which will be effective on August 1, 2007. The Medical Assistance Division amended the section for the State Coverage Insurance (SCI) program to accomplish the adult expansion of Medicaid for adults at or below 100% of the federal poverty level (FPL), as funded and authorized by legislative appropriation for FY 08, in order to make full use of the available funding.

8.200.430.16 RECIPIENT FINANCIAL RESPONSIBILITIES:

Providers who participate in medicaid agree to accept the amount paid as payment in full, see 42 CRF 447.15, with the exception of co-payment amounts required in certain medicaid categories. Other than the co-payments, a provider cannot bill a recipient for any unpaid portion of the bill or for a claim that is not paid because of provider administrative error or failure of multiple providers to communicate eligibility information. Native Americans are exempt from co-payment requirements.

A. Failure to follow managed care policies: A recipient must be aware of the physicians, pharmacies, hospitals, and another provider who participate in their health maintenance organization (HMO) or other managed care plan. A recipient is responsible for payment for services if [~~he/she~~] he uses a provider who is not a participant in [~~his/her~~] his plan or if [~~he/she~~] he receives any services without complying with the rules, policies, and procedures of the plan.

B. Denied emergency room claims: A recipient is responsible for

payment of a hospital outpatient emergency room [~~claims~~] claim if a determination is made by MAD or its designee that an emergency did not exist at the time the service was furnished.

(1) A provider can bill the recipient directly for the denied emergency room charge.

(2) The recipient cannot be billed for denied ancillary services, such as laboratory and radiology services.

C. Other recipient payment responsibilities: If all the following conditions are met before a service is furnished, a recipient can be billed directly by a provider for services and is liable for payment:

(1) the recipient is advised by a provider that the particular [~~services~~] service is not covered by medicaid or are advised by a provider that [~~he/she~~] he is not a medicaid provider;

(2) the recipient is informed by a provider of the necessity, options, and charges for the services and the option of going to [~~other~~] another provider who is a medicaid provider; and

(3) the recipient agrees in writing to have the service provided with full knowledge that [~~he/she~~] he is financially responsible for the payment.

D. Co-payment responsibility for SCHIP and WDI recipients: It is the recipient's responsibility to pay the co-payment to the provider. Children eligible for category 032 with family income between 185-235% of poverty (SCHIP) and working disabled individuals (WDI), category 043, will have co-payment requirements as follows:

- (1) WDI
 - (a) \$7 per outpatient physician visit, other practitioner visit, clinic visit, urgent care visit, outpatient therapy session, or behavioral health session;
 - (b) \$7 per dental visit;
 - (c) \$20 per emergency room visit;
 - (d) \$30 per inpatient hospital admission;
 - (e) \$5 per prescription, applies to prescription and non-prescription drug items.

- (2) SCHIP
 - (a) \$5 per outpatient physician visit, other practitioner visit, clinic visit, urgent care visit, outpatient therapy session, or behavioral health session;
 - (b) \$5 per dental visit;
 - (c) \$15 per emergency room visit;
 - (d) \$25 per inpatient hospital admission;
 - (e) \$2 per prescription, applies to prescription and non-prescription drug items.

E. Co-payment exclusions: Certain services and populations are exempt from co-payment responsibilities.

(1) Preventive, prenatal care services and contraceptive management services are exempt from the copayment requirement.

(2) Services provided at Indian health service facilities, by urban Indian providers and by tribal 638s are also exempt from the copayment requirement.

(3) There is no co-payment required during presumptive eligibility or retroactive eligibility periods.

(4) There is no co-payment required for services provided to Native Americans.

F. **Co-payment maximum for SCHIP and WDI:** It is the responsibility of the family to track and total the co-payments paid. Once the family yearly maximum amount for SCHIP and WDI recipients has been paid by the family via co-payments on medicaid covered services, the recipient must notify the medical assistance division. Verification must be provided to the medical assistance division that the co-payment maximum for SCHIP and WDI recipients has been paid. The first month that co-payments will no longer be required by the SCHIP and WDI recipient is the month following the month in which it has been verified by the medical assistance division that the maximum amount has been met. If the determination is made after the ~~[twenty-fifth (25th)]~~ 25th of the month, the change is made effective the second month after the request. No retroactive eligibility for the "met co-payment maximum" criteria is allowed. Subsequent to establishing that the co-payment maximum amount has been met, the WDI recipient and the family of SCHIP recipients is not responsible for payment of co-payments for the remainder of that calendar year.

(1) Co-payment maximum amounts for SCHIP recipients are calculated at initial determination and re-determination of eligibility by ISD. The co-payment maximum amount calculated at the re-determination is effective for the following year.

(2) If the family income decreases to below 185% of federal income poverty guidelines, the family may report that change and have the children changed to category 032 eligibility up to 185% of poverty, with no co-payment requirements. The change is effective in the month following the month of such determination. If the determination is made after the ~~[twenty-fifth (25th)]~~ 25th of the month, the effective date of the change is the second month after such verification.

(3) The family maximum co-payment amounts for SCHIP recipients are as follows:

(a) families with income between 185-200% FPL- maximum is 3%

(b) families with income between 201-215% FPL- maximum is 4%

(c) families with income between 216-235% FPL- maximum is 5%

(4) The co-payment maximum varies depending on the recipient's earned and unearned income. Once the recipient has reached ~~[his/her]~~ his co-payment maximum on covered medicaid services, co-payments cease for the rest of that calendar year, only after the recipient has fulfilled the required steps. For SCHIP, see Paragraph (5) of Subsection A of Section 16 of 8.200.430 NMAC; for WDI, see Section 9 of 8.243.600 NMAC.

(5) Co-payment maximum amounts for WDI recipients are calculated at initial determination, based on the income received the first month of eligibility, and every twelve months thereafter. The co-payment maximum amount calculated at the initial determination is prorated for the rest of the calendar year and is also determined for the following calendar year. At each annual periodic review, the co-payment maximum will be calculated for the following calendar year.

(a) Recipients with earned and unearned income below 100% FPL - maximum is \$600.

(b) Recipients with earned and unearned income between 100-250% FPL - maximum is \$1500.

G. **Co-payment responsibility for state coverage insurance (SCI) recipients:** It is the recipient's responsibility to pay the co-payment to the provider. Adults eligible for category 062 with family income from 0-200% of federal poverty limit will have copayment responsibility as follows:

Service	Co-pay at 0% - 100% FPL- 062	Co-pay at 101% - 150% FPL-062	Co-pay at 151% - 200% FPL-062
Physician/provider visits (no co -pay for preventive services-see below)	\$0	\$5	\$7
Pre/post natal care	\$0	\$0	\$0
Preventive services	\$0	\$0	\$0
Hospital inpatient medical/surgical	\$0/day	\$25[/day] per admission	\$30[/day] per admission
Hospital inpatient maternity	\$0/day	\$25[/day] per admission	\$30[/day] per admission
Hospital outpatient surgery/procedures	\$0	\$5	\$7
Home health	\$0	\$5	\$7
PT, OT & SLP	\$0	\$5	\$7
Diagnostics (excluding routine lab and x -ray)	\$0 (included in office visit)	\$0 (included in office visit)	\$0 (included in office visit)
DME/supplies	\$0	\$5	\$7
Emergency services	\$0	\$15 per visit, waived if admitted to a hospital within 24 hours	\$20 per visit, waived if admitted to a hospital within 24 hours
Urgent care	\$0	\$5	\$7
Prescription drugs: generic name brand	\$3 per prescription	\$3 per pres cription	\$3 per prescription

Behavioral health and substance abuse: outpatient office visit and outpatient substance abuse treatment inpatient behavioral health and inpatient detox	\$0 \$0	\$5 \$25	\$7 \$30
Limits on out-of-pocket expenses	Out of pocket charges for all participants will be limited to 5% of countable family income per benefit year. Pharmacy out-of-pocket charges for all participants will be limited to \$12 per month.		

H. **Co-payment exclusions for SCI recipients:** Certain services and populations are exempt from co-payment responsibilities.

(1) Prenatal care services are exempt from the co-payment requirement.

(2) Services provided at Indian health service facilities, by urban Indian providers and by tribal 638s are also exempt from the co-payment requirement.

I. **Cost-sharing maximum for SCI recipients:** It is the responsibility of the client to track and total the co-payments and the employee portion of the premiums paid. If required, the employer portion of the premium is not counted toward the cost-sharing maximum and must be paid by (or on behalf of) the individual enrollee each month regardless of income category ~~and/or~~ or cost-sharing maximum status. Once the yearly maximum amount for SCI recipients has been paid by the individual via co-payments and the employee portion of the premiums on covered services, the recipient must notify the managed care organization (MCO) in which he or she is enrolled. It is the client's responsibility to notify the MCO and provide verification to the MCO that the cost-sharing maximum for SCI has been paid. The first month that cost-sharing will no longer be required by the SCI recipient is the month following the month in which it has been verified by the MCO that the maximum amount has been met. If the determination is made after the ~~twenty-fourth (24th)~~ 24th of the month, the change is made effective the second month after verification. No retroactive eligibility for the "met cost-sharing maximum" criteria is allowed. Subsequent to establishing that the cost-sharing maximum amount has been met, the SCI recipient is not responsible for payment of co-payments and employee portion of the premiums for the remainder of that benefit year. Co-payment maximum amounts for SCI recipients are calculated at initial determination and re-determination of eligibility by ISD at 5% of the annual countable income. The co-payment maximum amount calculated at the re-determination is effective for the following benefit year. See also 8.262.600.9 NMAC.

J. Premium payments, when required, must be paid in full each month, even if cost-sharing maximum has been reached and there is an overpayment. No partial payments of premiums or co-payments will be allowed. No premiums or co-payments will be refunded.

[2-1-95, 3-1-99, 7-1-00; 8.200.430.16 NMAC - Rn, 8 NMAC 4.MAD.437 & A, 1-1-01; A, 1-1-02; A, 6-1-04; A, 6-15-04; A, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.262.400 NMAC, Sections 7, 11, 13 and 17, which will be effective on August 1, 2007. The Medical Assistance Division amended the section for the State Coverage Insurance (SCI) program to accomplish the adult expansion of Medicaid for adults at or below 100% of the federal poverty level (FPL), as funded and authorized by legislative appropriation for FY 08, in order to make full use of the available funding.

8.262.400.7 DEFINITIONS:

A. **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or a failure to provide a service in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.

B. **Authorized representative:** An individual or entity for whom or for which the applicant has signed a release of confidentiality and to whom notices will be sent.

C. **Benefits:** SCI-covered services provided by the SCI-participating MCO and for which payment is included in

the capitation rate, as defined in 8.262.600 NMAC.

D. **Capitation:** A per-member, monthly payment to an MCO that covers contracted services and is paid in advance of service delivery. It is a set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed in units of "per member per month" (PMPM).

E. **Catastrophic coverage:** Insurance coverage for specific catastrophic events, such as death, fire, flood, and some medical conditions.

F. **Category:** A designation of the automated eligibility system. The assigned category is applicable for a period of 12 consecutive months regardless of changes in income or family status, subject to change by request from the recipient.

G. **Cost-sharing:** Premiums and copayments owed by the member based on income group category.

H. **Cost-sharing maximum:** The cost sharing maximum is determined during the initial eligibility determination and recertification process. The cost sharing maximum amount established at the point of eligibility determination for the benefit year represents an amount equal to 5% of the program participant's countable income.

I. **Coverage:** Coverage month is a month where all eligibility and enrollment requirements including premium payment, if applicable, are met.

J. **Eligibility:** The process of establishing that SCI residency, citizenship or alien status, health insurance coverage, income, living arrangement, and age requirements are met, as defined in this part and 8.262.500 NMAC.

K. **Employer:** An employer with fifty or fewer eligible employees on a full or part-time basis.

L. **Employer group:** A group of employees employed by an eligible employer who receive SCI benefits through the employer.

M. **Employee:** A person employed by an employer who participates in the SCI health benefit plan.

N. **Employer enrollment period:** Employer's standard practice for new and annual health insurance enrollment.

O. **Enrollment:** The process of enrolling eligible members in an MCO for purposes of management and coordination of health care delivery. The process of enrolling members either by the employer or individually in an available SCI-participating MCO for purposes of health care coverage. Enrollment encompasses selection of an MCO, notification of the selection to the MCO, and timely payment of premiums, as required, as designed by the MCO.

P. **Eligibility letter:** A notice of SCI eligibility and the potential for SCI coverage contingent upon enrollment with a SCI participating MCO. The letter

will include start and end dates of eligibility, the requirement to enroll before coverage will begin, and the need to enroll 30 days subsequent to the month of issuance of the enrollment letter. The letter will also notify the member of the federal poverty level subcategory and of the responsibility to track out-of-pocket expenditures for SCI cost sharing.

Q. Fifth degree of relationship: The following relatives are within the fifth degree of relationship to a dependent child:

- (1) father (biological or adopted);
- (2) mother (biological or adopted);
- (3) grandfather, great grandfather, great-great-grandfather, great-great-great-grandfather;
- (4) grandmother, great grandmother, great-great-grandmother, great-great-great-grandmother;
- (5) spouse of child's parent (step-parent);
- (6) spouse of child's grandparent, great grandparent, great-great-grandparent, great-great-great-grandparent (step-grandparent);
- (7) brother, half-brother, brother-in-law, stepbrother;
- (8) sister, half-sister, sister-in-law, stepsister;
- (9) uncle of the whole or half blood, uncle-in-law, great uncle, great-great uncle;
- (10) aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;
- (11) first cousin and spouse of first cousin;
- (12) son or daughter of first cousin (first cousin once removed) and spouse;
- (13) son or daughter of great aunt or great uncle (first cousin once removed) and spouse; or
- (14) nephew/niece and spouses.
- (15) **Note:** A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

R. Fiscal agent (medicaid fiscal agent): An entity contracted by the state medicaid program to sort and process eligibility information as well as pay fee-for-service and capitation claims.

S. Grievance (member): Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO or its operations that is not an MCO action.

T. Group of one: Individuals who enroll without an employer group but report self-employment.

U. Health insurance: Insurance against loss by sickness or bodily injury. The generic term for any forms of

insurance that provide lump sum or periodic payments in the event of bodily injury, sickness, or disease, and medical expense. This includes but is not exclusive to: medicare part A ~~and/or~~ or medicare part B, medicaid, CHAMPUS, and other forms of government health coverage.

V. Hearing or administrative hearing: An evidentiary hearing that is conducted so that evidence may be presented.

W. Income groupings- 0-100%, 101-150%, and 151-200% of federal poverty levels: These income groupings define the premium, copayment, and cost-sharing maximums for SCI cost-sharing purposes.

X. Individual: A person who enrolls in SCI who is not a member of an eligible employer group and pays the premium amount designated for both the employee share, if applicable based on income, and the employer share, or has that amount paid on his/her behalf by another entity.

Y. Managed care organization (MCO): An organization licensed or authorized through an agreement among state entities to manage and coordinate and receive payment at actuarially sound payment rates for the delivery of specified services to enrolled members from a certain geographic area.

Z. Member: An eligible member enrolled in an MCO.

AA. Member month: A calendar month in which a member is enrolled in an MCO.

BB. Notice: A written statement that includes what action is being taken, the reasons for the intended action, the specific regulation that requires the action, and an explanation of the circumstances under which the service may be continued if a hearing is requested.

CC. Parental or custodial relative status: The state of having a dependent child under the age of 18 who is the son, daughter, or relative within the fifth degree of relationship living in the household and under the care and control of the individual.

~~**DD. Pre-enrollment (contact) letter:** A notice sent by one of the participating SCI MCOs to the potential SCI enrollee indicating that the enrollee has contacted the MCO and obtained the required referral to the income support division to determine eligibility for SCI coverage.~~

~~**EE. DD. Premium- employer:** A specific monthly payment payable to the MCO by employers who enroll their employees in SCI at a rate set by the department. This amount may be paid by an individual member not in an employer group in order to participate in SCI. Subject to available funding, the state may allocate funds to~~

~~assist certain eligible individuals with payment of the employer premium contribution and will notify eligible individuals of such assistance.~~ Premiums cannot be refunded.

~~**FF. EE. Premium- employee:** A specific monthly payment payable to the MCO calculated by the department based on a subcategory of eligibility representing an income grouping. 062-0-100% FPL, 062-101-150% FPL, 062-151-200% FPL. Premiums and copayments cannot be refunded.~~

~~**GG. FF. Qualifying event:** Termination of employment for any reason; loss of eligibility for health insurance benefits due to reduction in work hours; loss of health insurance coverage due to death, divorce or legal separation from spouse, loss of dependent status; moving to or from another state.~~

~~**HH. GG. SCI (State coverage insurance):** the New Mexico health care program implemented under the authority of the health insurance flexibility and accountability (HIFA) waiver granted to the state by the centers for medicare and medicaid services (CMS).~~

~~**II. HH. Shoebox method:** The method under which an SCI member is responsible for tracking, and submission of a request for verification of total expenditures for himself, based on SCI employee premiums and copayments for purposes of establishing that the cost-sharing maximum amount has been met.~~

~~**JJ. II. Voluntary drop:** The act of voluntarily terminating or discontinuing health insurance coverage. ~~It will not be considered a voluntary drop when an individual (or spouse) fails to take advantage of an offer of health insurance by an employer (unless the insurance is SCI coverage), or fails or refuses to take advantage of a COBRA continuation policy. Also not considered to be a voluntary drop are loss of access to employer sponsored insurance due to loss of employment, divorce, death of a spouse, or geographic move, loss of coverage as a dependent child, or loss of medicaid eligibility.~~~~

~~[8.262.400.7 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07]~~

8.262.400.11 ELIGIBILITY: To be eligible for SCI, an individual must meet all eligibility criteria regarding age, citizenship or alien status, noninsured status, voluntary drop of insurance, income, and living arrangement (i.e., living in a public institution). An eligibility determination will be made by the 45th day after the date of application. If it is determined that an individual does not meet all SCI eligibility criteria, a notice of denial with the reason for denial and rights to appeal will be issued. If it is determined that an individual meets all eligibility criteria, the individual will be

awarded an "eligibility letter," which will notify the individual of their right to enroll, and of the fact that coverage will not begin unless and until the individual is enrolled and has paid the determined premium amount, if required, to a SCI-contracted MCO. No partial payments of premiums will be allowed.

[8.262.400.11 NMAC - N, 7-1-05; A, 4-16-07; A/E, 8-1-07]

8.262.400.13 ENROLLMENT: To be considered enrolled in a given month, an individual must have [~~notified the MCO of their selection~~] selected an MCO and become enrolled [though the MCO process], and the MCO must consider [~~their~~] his premium(s) to be paid. Upon each positive eligibility determination, an enrollment letter will be issued, advising the individual that SCI coverage will begin upon completed enrollment with a SCI-contracted MCO. Each month, the MCO will provide a roster that includes each enrolled individual. Each SCI-contracted MCO will notify the individual [~~and/or~~] or the employer of the owed premium amount, if required, for the ongoing month. If the premiums are not paid on time, the MCO will send advance notice of closure to the member, prior to termination of coverage due to non-payment. The MCO will subsequently notify the individual of the termination and the requirements for reenrollment.

[8.262.400.13 NMAC - N, 7-1-05; A/E, 8-1-07]

8.262.400.17 SPECIAL RECIPIENT REQUIREMENTS:

A. **Age:** To be eligible for SCI, an individual must be age 19 through 64.

B. **Continuing eligibility on the factor of age:** When an individual has been determined eligible on the condition of age, he remains eligible on the condition until the applicable upper age limit is reached. An individual who exceeds the age limit during a given month is eligible for that month, unless the birthday is the first day of the month.

C. **Uninsured:** For purposes of SCI eligibility, an individual cannot have health insurance coverage, excluding catastrophic or supplemental health insurance policies. An individual with access to health care at Indian health services, veteran's administration, or through worker's compensation, is not considered to be insured for purposes of this program by having such access.

D. **Enrolled:** An individual who has been determined eligible for SCI must notify an SCI-contracted MCO and must have made and continue to make premium payment as a condition of SCI coverage.

E. **Premium payment:** SCI requires payment of premiums by the employer at a rate established by the department, and by the employee per month as calculated by income level; 062A, 062B and 062C. [~~The individual is~~] Some individuals may be required to pay both the employers and employee's share based on income level. Nothing in this section prevents another entity from contributing the employer [~~and/or~~] or employee premium share on behalf of an individual member. Nothing in this section prevents the employer or a third party from paying the employee portion of the premium on behalf of the employee. The due date of premium payments will be determined by the MCO.

F. **Voluntary drop of health insurance:** An individual who has voluntarily dropped health insurance will be ineligible for SCI for six months, starting with the first month the health insurance was dropped (i.e., the first month of no coverage). An employer who has voluntarily dropped health insurance will be ineligible to enroll employees in SCI for twelve months. The following circumstances are not considered a voluntary drop:

(1) an individual (or spouse) fails to take advantage of an offer of health insurance by an employer (unless the insurance is SCI coverage), or fails or refuses to take advantage of a COBRA continuation policy;

(2) loss of access to employer-sponsored insurance due to loss of employment, divorce, death of a spouse, or geographic move, loss of coverage as a dependent child, or loss of medicaid eligibility; or

(3) an employee enrolled in an individual health plan whose employer is offering SCI employer-sponsored insurance (as an initial offering or at open enrollment) will be able to participate in SCI under group coverage and will not be considered to have voluntarily dropped health insurance in order to participate in the SCI employer group plan.

G. **Cost-sharing maximums:** An SCI-covered individual is responsible for tracking and reporting of the cost-sharing amount paid in a benefit year, and for reporting to the managed care organization (MCO) when the cost-sharing maximum amounts are met (also known as "shoebox methodology"). The first month of coverage without cost-sharing will be the month after the month of verification that the maximum expenditure limit has been met, unless the determination is made after the 24th of the month. Where the determination is made after the 24th of the month, the first month of coverage without cost-sharing will be the second month after verification. The period of coverage without cost-sharing will end on the last day of that

benefit year. No partial payments of premiums or of copayments will be allowed. No premiums or copayments will be refunded. [8.262.400.17 NMAC - N, 7-1-05; A, 4-16-07; A/E, 8-1-07]

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

This is an emergency to amendment to 8.262.600 NMAC, Sections 9 and 10, which will be effective on August 1, 2007. The Medical Assistance Division amended the section for the State Coverage Insurance (SCI) program to accomplish the adult expansion of Medicaid for adults at or below 100% of the federal poverty level (FPL), as funded and authorized by legislative appropriation for FY 08, in order to make full use of the available funding.

8.262.600.9 BENEFIT DESCRIPTION: The benefit package is described in 8.306.7. NMAC, *Benefit Package*, SCI benefits are administered by contracted managed care organizations. There is no for-service coverage under the SCI program.

A. The level of cost-sharing (i.e., the premium and co-payment amounts as well as the cost-sharing maximum amounts) required in the SCI program is contingent upon the income grouping associated with the applicant's countable income at the point of the application disposition. See also 8.262.500.9 NMAC.

B. The cost-sharing maximum is an amount calculated for the benefit year that represents an amount equal to 5% of the enrollee countable income at the time of the application disposition. It is the responsibility of each SCI-covered individual to track and total the amounts paid for the SCI employee portion of the premiums and SCI co-payments on SCI-covered services in a benefit year. Once the cost-sharing maximum amount has been paid by an SCI-covered individual, the individual must notify the MCO and provide verification of the paid amounts. Once the paid amounts have been verified as paid, the individual will not owe further employee premium or co-payment amounts for the remainder of that benefit year. The first month that cost sharing is not required by the SCI-covered individual is the month following the month in which it has been verified by the MCO that the cost-sharing maximum amount has been met. If the determination is made after the [~~twenty-fourth (24th)~~] 24th of the month, the change is made effective the second month after the verification. No retroactive eligibility for the "met cost-sharing maximum" amount is allowed. The employer portion of the premium is not

counted toward the cost-sharing maximum and must be paid by (or on behalf of) the individual enrollee each month regardless of income category ~~[and/or]~~ or cost-sharing maximum status. Premium payments must be paid in full each month, even if the cost-sharing maximum has been reached and there is an overpayment. No partial payments of premiums or copayments will be allowed. No premiums or copayments will be refunded.

C. Employer share payable by individual: An individual member (one who is enrolled outside of an employer group) ~~[is]~~ may be responsible for payment of the premium share for the employee as determined by federal poverty level and the employer premium. The employer portion of the premiums will not be counted toward the cost-sharing maximum.

[8.262.600.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07]

8.262.600.10 BENEFIT DETERMINATION: Benefits will begin when it is established that an individual has met all eligibility and enrollment criteria for a given month. Benefits will be issued only via the managed care contractor selected by the individual; there is no fee-for-service coverage. A member of an employer group who has met the cost sharing maximum amount will receive coverage without copayments or premiums for the employee share, for the remainder of the benefit year. The employer will retain responsibility for the employer portion of the premium, as required, for the remainder of the benefit year. An individual who is not part of an employer group and has met the cost-sharing maximum amounts will receive coverage without payment of premiums, if applicable, for the employee premium shares and co-payments for the remainder of that benefit year. The employer portion of the premium, if required, is not counted in the cost-sharing maximum calculations and must still be paid each month. If another entity has made cost-sharing payment on behalf of an individual, those "third party" paid amounts will not be counted toward the cost-sharing maximum.

[8.262.600.10 NMAC - N, 7-1-05; A, 3-1-06; A/E, 8-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency to amendment to 8.306.4 NMAC, Section 10, which will be effective on August 1, 2007. The Medical Assistance Division amended the section for the State Coverage Insurance (SCI) program to accomplish the adult expansion of

Medicaid for adults at or below 100% of the federal poverty level (FPL), as funded and authorized by legislative appropriation for FY 08, in order to make full use of the available funding.

8.306.4.10 SPECIAL SITUATIONS:

A. **Clients in third trimester of pregnancy:** A woman in her third trimester of pregnancy at the time of enrollment, who has an established obstetrical provider, may continue that relationship. Refer to Paragraph (4) of Subsection I of 8.305.11.9 NMAC for special payment requirements.

B. **Newborn enrollment:** ~~[Refer to Paragraph (1) of Subsection A of 8.305.4.10 NMAC for requirements.]~~ Newborns of SCI enrolled mothers who are determined to be eligible for the Medicaid SALUD! program will be eligible for a period of 12-month starting with the month of birth. The newborn is enrolled retroactive to the date of birth with the same contractor the mother had during the birth month, as soon as the newborn Medicaid eligibility is approved.

[8.306.4.10 NMAC - N, 7-1-05; A, 4-16-07; A/E, 8-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency to amendment to 8.306.5 NMAC, Sections 9, 10 and 14, which will be effective on August 1, 2007. The Medical Assistance Division amended the section for the State Coverage Insurance (SCI) program to accomplish the adult expansion of Medicaid for adults at or below 100% of the federal poverty level (FPL), as funded and authorized by legislative appropriation for FY 08, in order to make full use of the available funding.

8.306.5.9 ENROLLMENT PROCESS:

A. **Enrollment requirements:** The managed care organization (MCO) shall provide an open enrollment period during which the MCO will enroll individuals in accordance with accepted MCO practice in the order in which they apply, up to the limits contained in the contract. The MCO shall not discriminate on the basis of health status or a need for health care services. The MCO shall not discriminate against individuals eligible to enroll on the basis of disability, race, color, national origin, or sexual orientation. The MCO shall not use any policy or practice that has the effect of discriminating on the basis of disability, race, color, national origin, or sexual orientation. All enrollments shall be voluntary and based on member or employ-

er choice.

B. **Member lock-in:** Except as otherwise provided below, once a member in an employer group has enrolled in an MCO through his employer group, he may only transfer to another MCO, 1) during the employer enrollment period, that occurs when the employer contracts with another MCO; or 2) if he changes employers. A member enrolled individually may only transfer to another MCO when his eligibility is recertified or "for cause" as defined as follows: the following criteria shall be cause for transfer:

- (1) continuity of care issues;
- (2) family continuity;
- (3) administrative or data entry error in assigning a client to an MCO;
- (4) assignment of a member where travel for primary care exceeds community standards (90% of urban residents shall travel no further than 30 miles to see a PCP; 90% of rural residents shall travel no further than 45 miles to see a PCP; and 90% of frontier residents shall travel no further than 60 miles to see a PCP); urban counties are: Bernalillo, Los Alamos, Santa Fe and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel and Cibola; rural counties are those which are not listed as urban or frontier;

(5) the member moves out of the MCO service area;

(6) the MCO does not, because of moral or religious objections, cover the service the member seeks;

(7) the member needs related services to be performed at the same time, not all related services can be provided by the PCP, and another provider determines that receiving the services separately would subject the member to unnecessary risk; and

(8) other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the member's health care needs; if applicable, the member shall be notified by the MCO, 60 days prior to the expiration of the member's lock-in period of the deadline for selecting a new MCO; members in an employer group will be notified of the employer enrollment period by the employer or the broker, if applicable; members who are not in an employer group will be notified of the expiration of their lock-in period by the MCO.

C. **Selection period:** ~~[As a condition of enrollment, the potential member has 30 days to send in the eligibility application and all documentation to the income support division (ISD) office after receiving the pre enrollment (contact) letter from the MCO.]~~ After receiving a letter of eligibility from the ISD office, a new indi-

vidual member shall complete enrollment with an MCO within a ~~thirty~~ 30 day period. If enrollment, including payment of ~~applicable~~ any required premium, ~~if any,~~ is not made within that timeframe, the member shall be considered to have voluntarily dropped the SCI insurance coverage, which means the individual, may not enroll with an SCI MCO for six months. An employer group has a specified time period, determined by the MCO and HSD, in which to complete enrollment and premium payment with an SCI MCO after all employees have received their letters of eligibility. Failure of the employer to complete the enrollment process within this time period will deem the employer to have voluntarily dropped insurance coverage and the employer will be ineligible to enroll with an SCI MCO for a twelve-month period; however, the individual employees are eligible to enroll immediately as individuals and will not be considered to have voluntarily dropped health insurance coverage.

D. Beginning date of enrollment: Enrollment begins the first day of the first full month following receipt of eligibility letter and MCO completion of enrollment including receipt of required premiums. However, if MCO receipt of required premium payment occurs after the ~~25th~~ HSD-approved designated day of the month and before the first full day of the following month, the enrollment begins on the first day of the second full month after MCO receipt of premium payments.

E. Member switch enrollment: A member enrolled as an individual and not as an employee enrolled through an employer group may request to be disenrolled from an MCO and switch to another MCO (if available) "for cause" at any time. The request shall be made in writing to HSD. HSD shall review the request and furnish a written response to the member and the MCO in a 30 day period. The following criteria shall be used to make a decision regarding a switch enrollment request:

- (1) continuity of care issues;
- (2) family continuity;
- (3) administrative or data entry error in enrolling a member with an MCO;
- (4) travel for primary care exceeds community standards, (90% of urban residents shall travel no further than 30 miles to see a PCP; 90% of rural residents shall travel no further than 45 miles to see a PCP; and 90% of frontier residents shall travel no further than 60 miles to see a PCP); urban counties are: Bernalillo, Los Alamos, Santa Fe and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel and Cibola; rural counties are

those which are not listed as urban or frontier;

(5) the member moves out of the MCO service area;

(6) the MCO does not, because of moral or religious objections, cover the service the member seeks;

(7) the member needs related services to be performed at the same time, not all related services can be provided by the PCP, and another provider determines that receiving the services separately would subject the member to unnecessary risk; and

(8) other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the member's health care needs; if applicable, the member shall be notified by the MCO, 60 days prior to the expiration of the member's lock-in period of the deadline for selecting a new MCO; members in an employer group will be notified of the employer enrollment period by the employer or the broker, if applicable; members who are not in an employer group will be notified of the expiration of their lock-in period by the MCO.

F. Disenrollment, MCO initiated: The MCO may request that a particular member be disenrolled. Other than for non-payment of premiums, member disenrollment from an MCO will be considered only in rare circumstances. Disenrollment requests shall be made in writing to HSD. The MCO shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The MCO shall submit a copy of the member's notification letter to HSD. If the disenrollment is granted, the MCO retains responsibility for the member's care until the member is enrolled with another SCI- contracted MCO. If the member is part of an employer group and the employer does not contract with another MCO, HSD may allow the member to enroll with another MCO, but the member shall be responsible for the employer's premium share, if required. The MCO shall assist with transition of care to the other MCO.

G. Conditions under which an MCO requests member disenrollment: The MCO may not seek to terminate enrollment because of an adverse change in the member's health. The MCO shall not request disenrollment because of an adverse change in the member's health status or because of the member's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from his special needs, except when his continued enrollment with the MCO seriously impairs the MCO's ability to furnish services to either this particu-

lar member or other members. The MCO shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The MCO shall submit a copy of the member's notification letter. If the disenrollment is granted, the MCO retains responsibility for the member's care until the member is enrolled with another MCO. The MCO shall assist with transition of care.

H. Re-enrollment limitations: If a request for disenrollment is approved, the member shall not be re-enrolled with the requesting MCO for a period of time to be determined by HSD. The member and the requesting MCO shall be notified by HSD of the period of disenrollment. If a member has been disenrolled by all available contracted MCOs, HSD shall evaluate the member for termination from SCI.

I. Date of disenrollment: MCO enrollment shall terminate at the end of the month following the month in which HSD approval for disenrollment is granted. [8.306.5.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07]

8.306.5.10 ENROLLMENT [ROSTERS] DATA: The MCO shall submit a monthly roster to HSD by ~~the 24th~~ an-agreed upon day of the month with, at minimum, the ID number of members; identifying who is enrolled; the status of premium payment, if applicable, who is to be disenrolled and the reason for disenrollment; the effective dates of enrollment; members' names, addresses, social security numbers, according to a format provided by HSD. HSD will verify the roster against the state eligibility file. If any discrepancies are found, an error report is generated and HSD staff shall communicate with the MCO ~~and/or~~ or income support division (ISD) staff to resolve any discrepancies. The MCO shall resubmit any necessary corrections, working with SCI staff if necessary, before the end of the month. HSD sends a final enrollment roster to the MCO based on all verified members identified by the cutoff date.

[8.306.5.10 NMAC - N, 7-1-05; A/E, 8-1-07]

8.306.5.14 SCI MARKETING-OUTREACH GUIDELINES: When marketing to SCI members, MCOs shall follow the SCI marketing guidelines.

A. Minimum marketing and outreach requirements: Marketing is defined as the act or process of promoting a business or commodity. The marketing and outreach material shall meet the following minimum requirements:

- (1) marketing and outreach materials shall meet requirements for all com-

munication with SCI members, as required in the quality standards (8.305.8.15 NMAC, *Member Bill of Rights*) and incorporated into the managed care contract;

(2) all marketing or outreach materials produced by the MCO under the SCI contract shall state that such services are funded in part under contract with the state of New Mexico;

(3) marketing and outreach information provided to members shall be accurate, not misleading, and non-threatening;

(4) if there is a population of greater than 5% in the MCO membership, as identified by the MCO and HSD, that has limited English proficiency, as identified by the MCO or HSD, marketing materials shall be available in the language of that population; and

(5) other requirements specified by the state.

B. **Scope of marketing**

guidelines: Marketing materials are defined as brochures and leaflets; newspaper, magazine, radio, television, billboard, and MCO yellow page advertisement, and web site and presentation materials used by an MCO and MCO representative or MCO sub-contractor to attract and retain SCI enrollment. HSD may request, review and approve or disapprove any communication to any SCI member. HSD may request, review and approve or disapprove any communication to any SCI member regarding behavioral health. MCOs are not restricted by HSD in their general communications to the public. HSD shall approve advertisements mailed to, distributed to, or aimed at SCI members and marketing material that mentions SCI, medicaid, medical assistance, Title XIX, Title XXI or Salud! or makes reference to medicaid behavioral health services. The MCO shall notify HSD of significant format changes to advertisements. Examples of medicaid-specific materials would be those that:

(1) are in any way targeted to SCI populations, such as billboards or bus posters disproportionately located in low-income neighborhoods; or

(2) contain language or information designed to attract SCI enrollment.

C. **Advertising and marketing material:** Medicaid-specific advertising and marketing materials, including materials disseminated by a sub-contractor and information disseminated via the internet requires HSD approval. In reviewing this information, HSD shall apply a variety of criteria.

(1) **Accuracy:** The content of the material shall be accurate. Information deemed inaccurate shall be disallowed.

(2) **Misleading references:** Misleading information about the MCO shall not be allowed even if it is accurate.

D. **Marketing and out-**

reach activities not permitted: The following marketing and outreach activities are not permitted regardless of the method of communication (oral, written or other means of communication) or whether the activity is performed by the MCO directly, its network providers, its subcontractors or any other party affiliated with the MCO. HSD may prohibit additional marketing activities at its discretion.

(1) asserting or implying that a member will lose SCI benefits if he does not enroll with the MCO or creating other scenarios that do not accurately depict the consequences of choosing a different MCO;

(2) designing a marketing or outreach plan that discourages or encourages MCO selection based on a potential member's health status or risk;

(3) making inaccurate, misleading or exaggerated statements designed to recruit a potential member;

(4) asserting or implying that the MCO offers unique covered services when another MCO provides the same or similar services;

(5) the use of more than nominal gifts, such as diapers, toasters, infant formula or other incentives to entice members to join a specific health plan;

(6) telemarketing or face-to-face marketing with potential members;

(7) conducting any other marketing activity prohibited by HSD;

(8) explicit direct marketing to members enrolled with other MCOs unless the member requests the information;

(9) distributing any marketing materials without first obtaining HSD approval;

(10) seeking to influence enrollment in conjunction with the sale or offering of any private insurance;

(11) engaging in door-to-door, telephone or other cold call marketing activities, directly or indirectly; and

(12) other requirements specified by HSD.

E. **Marketing in current care sites:** Promotional materials may be made available to members and potential MCO enrollees in care delivery sites, including patient waiting areas, if HSD has prior approved the content. Face-to-face meetings with MCO staff, at health care delivery sites, for the purpose of marketing to potential enrollees shall not be permitted.

F. **Provider communications with medicaid members about MCO options:** HSD marketing restrictions shall apply to MCO subcontractors and providers as well as to the MCO. MCOs are required to notify participating providers of the HSD marketing restrictions, including providing a copy of these regulations. HSD shall not review yellow page ads of individual providers, unless specifically requested

to do so.

G. **Member-initiated meetings with MCO staff prior to enrollment:** Face-to-face meetings requested by members are permitted. These meetings may occur at a mutually agreed upon site.

H. **Mailings by the MCO:** MCO mailings shall be permitted in response to member oral or written requests for information. The content of marketing or promotional mailings shall be approved by HSD. MCOs may, with HSD approval, provide potential members with information regarding the MCO/SCI benefit package. MCOs shall not send gifts, however nominal in value, in these mailings. MCOs may send solicited and unsolicited mailings to members and potential members. Unsolicited mailings are defined as: newsletters; notification of outreach events and member services meetings; educational materials and literature related to the MCO preventive medicine initiatives, (such as, diabetes screening, drug and alcohol awareness, and mammograms). HSD shall approve the content of mailings except health education materials. The target audience of the mailings shall be approved by HSD.

I. **Group meetings:** The MCO may hold public meetings. HSD shall be furnished with notice of the meetings and shall prior approve ~~the~~ marketing material to be presented at the meeting. HSD shall approve the methodology used by the MCO to solicit attendance for the public meetings. HSD may attend the meeting.

J. **Light refreshments for members at meetings:** The MCO may offer light refreshments at approved group meetings. The availability of food and beverages shall not be mentioned in advertisements for the meetings. *Alcoholic beverages shall not be offered at meetings.*

K. **Gifts, cash incentives or rebates to potential members:** MCOs and their providers, with HSD approval, may disseminate marketing materials, including nominal gifts such as pens, key chains and magnets to potential members.

L. **Gifts to members at health milestones unrelated to enrollment:** Members may be given "rewards" for accessing care, such as a baby T-shirt when a woman completes a targeted series of prenatal visits. Items that reinforce a member's healthy behavior, (car seats, infant formula, magnets and telephone labels) that advertise the member services hotline and the PCP office telephone number for members are examples of "rewards". HSD shall approve gifts with a retail value of over \$25.00. Health education videos may be provided. HSD encourages MCOs to include reward items in information sent to new MCO members.

M. **Marketing time**

frames: The MCO may initiate marketing and outreach activities at any time. [8.306.5.14 NMAC - N, 7-1-05; A/E, 8-1-07]

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

This is an emergency to amendment to 8.306.11 NMAC, Section 9, which will be effective on August 1, 2007. The Medical Assistance Division amended the section for the State Coverage Insurance (SCI) program to accomplish the adult expansion of Medicaid for adults at or below 100% of the federal poverty level (FPL), as funded and authorized by legislative appropriation for FY 08, in order to make full use of the available funding.

8.306.11.9 REIMBURSEMENT:

A. MCO and HSD shall comply with 8.305.11.9 NMAC, *Reimbursement for Managed Care* for the SCI program. Rates negotiated between HSD and the MCO are considered confidential.

B. **Payment of premiums:** In addition to capitation payments from HSD, the MCO shall receive premium payments as specified by HSD. Premiums will be paid as follows:

(1) **employer premium** amount determined by the department; and

(2) **employee or individual premium** determined by the department based on the federal poverty [~~limits~~] levels as follows: 0-100% per month, 101-150% per month, 151-200% per month,

C. **Premium timeframes:** If required, initial premiums are due to the MCO immediately upon enrollment and prior to the 1st day of the month before coverage begins. [~~A~~] When a premium payment is required, an employer group or individual member can only receive coverage when the premium has been paid. Capitation payments will not be paid unless verification of premium payment through the roster is received. If payment is required and not current within that timeframe, the employer group or individual member will not be covered for the next month and will not be able to enroll in an SCI MCO for a period of [~~twelve~~] 12 months for an employer group or six months for an individual member.

D. **Responsibility for premium payment:** For members in an employer group, the employer shall be responsible for ensuring payment of the employer and employee share (if any) of premiums. For individuals who are not affiliated with an employer group, the indi-

vidual or an entity paying on behalf of an individual shall be responsible for payment of both the employer and individual premium amount (if any). If a member who is part of an employer group has met the cost-sharing maximum, as verified by the MCO, HSD shall be responsible for payment of the member's; but not the employer's share of required premiums. For individual members not in an employer group who have met the cost-sharing maximum, HSD shall be responsible for the member's share of the required premium. The member will continue to be responsible for the employer's share of the required premium.

[8.306.11.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	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 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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