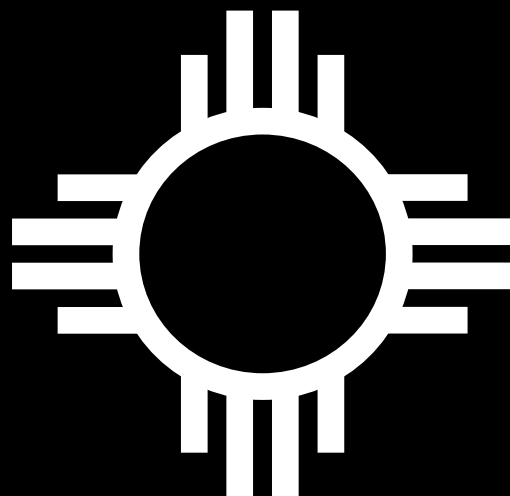


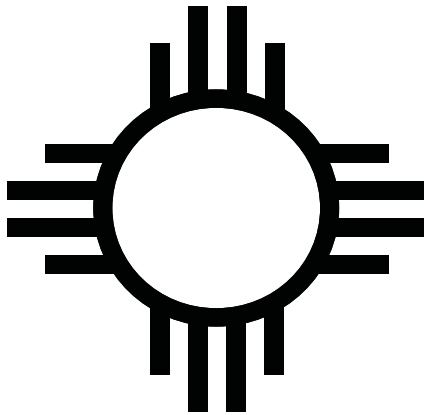
NEW MEXICO REGISTER



Volume XXI
Issue Number 6
March 31, 2010

New Mexico Register

Volume XXI, Issue Number 6
March 31, 2010



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2010

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New Mexico Register

Volume XXI, Number 6

March 31, 2010

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

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

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, April 8, 2010, beginning at 9:00 a.m., at the Albuquerque Convention Center - La Cienega Conference Room, Second Level-East Complex, 401 2nd St., NW, Albuquerque, New Mexico 87102, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; Commission Approval to Dispose of Fixed Assets; Update Regarding the Development of the Turkey, Upland Game, and Javelina Rules; General Public Comments (comments limited to 3 minutes); Presentation of a Proposed Timeline and Process for the Review of the Trapping and Furbearers Rule, 19.3.32, NMAC; Program Update and Proposed Amendment to the Aquatic Invasive Species Rule, 19.30.14, NMAC; Appeal of Importation Permit Denial; Update on the Re-Authorization Process of Habitat Stamp Program; and Closed Executive Session.

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 Sonya Quintana at (505) 476-8029. Please contact Ms. Quintana 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 also contact Ms. Quintana if a summary or other type of accessible form is needed.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

NEW MEXICO HIGHER EDUCATION DEPARTMENT

The New Mexico Higher Education

Department ("Department") hereby gives notice that the Department will conduct a public hearing in the Animas Conference Room, New Mexico Higher Education Department, 2048 Galisteo, Santa Fe, New Mexico, 87505, on May 3, 2010, from 9:00 a.m. to 10:00 a.m.. The purpose of the public hearing will be to repeal 5.55.4 NMAC, Dual Credit. Full text of the Dual Credit Rule may still be accessed at NMPED, 6.30.7 NMAC.

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Mr. Donald Schleisman, P-20 Policy and Programs Division, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505 (donald.schleisman@state.nm.us) (505) 476-8435 (fax (505) 476-8453).

Written comments must be received no later than 5:00 pm on May 3, 2010. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking action may be accessed on the Department's website (<http://hed.state.nm.us/>) or obtained from Mr. Donald Schleisman, P-20 Policy and Programs Division, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505 (donald.schleisman@state.nm.us) (505) 476-8435 (fax (505) 476-8453).

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

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday, May 21, 2010. The hearing will be held during the Board's regular business meeting beginning at 8:00 a.m., at the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to: Subsection C of 1.7.1.8 NMAC Approval Authority; Subsection C of 1.7.1.12 Employment

Records; Subsection A of 1.7.3.7 Definitions; Subsection B of 1.7.3.8 Classification Plan; Subsection A of 1.7.4.8 Pay Plan; and Subsection B of 1.7.4.8 Pay Plan.

A final agenda for the board meeting will be available at the Board office on May 14, 2010.

Persons desiring to present their views on the proposed changes may appear in person at said time and place or may submit written comments no later than 5:00 p.m. April 29, 2010, to the Board Office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. A copy of the proposed rule is available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.spo.state.nm.us/ beginning March 31, 2010.

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 in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING

The public hearing originally scheduled for March 31, 2010 at Mabry Hall has been rescheduled. The new date and time of the meeting is:

DATE: Friday, April 30, 2010
TIME: 2:00 pm until 4:00 pm
LOCATION: Mabry Hall, Jerry Apodaca Education Building, Santa Fe, NM 87501

The purpose of the public hearing will be to obtain input on the following rule: **6.75.2 NMAC RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU.** The proposed action is to repeal and replace this rule.

Interested individuals may testify either at the public hearing or submit written comments

regarding the proposed rulemaking to Sally A. Wilkinson, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (sally.wilkinson@state.nm.us) (505) 476-0315 fax (505) 827-6411. Written comments must be received no later than 5:00 p.m. on April 30, 2010. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed replacement rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Cia Tapia, Administrative Assistant, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, e-mail cesaria.tapia1@state.nm.us, phone (505) 827-6415, fax (505) 827-6411.

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

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

NEW MEXICO DEPARTMENT OF
PUBLIC SAFETY

NOTICE OF PUBLIC HEARING

The New Mexico Department of Public Safety (NMDPS) will be holding a Public Hearing for the sake of receiving comments on amendments to the 2010 Edwards Byrne Memorial Justice Assistance Grant (JAG). The hearing will be held at 1:30 P.M. on April 9, 2010 at the New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico 87507. The amendments will include, but is not limited to, changes, additions, deletions, and clarifications of the application process.

Copies of the proposed amendments shall be made available to the public ten days prior to the Public Hearing and may be obtained by calling 505-827-9112. The new Rules are also posted on the Department of Public Safety's website and may be accessed, free of charge, from the following website: <http://www.dps.nm.org/>

Comments on the amendments are invited. Oral comments may be made at the hearing, or written comments may be submitted by

mail to the Grants Management Bureau, New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, received no later than April 16, 2010 at 5:00 pm. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Evelyn Romero, 505-827-3347 at least ten (10) day prior to the hearing.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.4 NMAC, Sections 11, 13 and 14, effective April 12, 2010.

16.34.4.11 ~~IDENTIFICATION~~ ~~LICENSE~~

~~A. The board will, upon application, issue an identification license to any current licensee.~~

~~B. An identification license permits the licensee to perform services in mortuaries, detention centers and for persons who are homebound in private homes, hospitals, homes for the aged, nursing homes, or for weddings or other special events. A person using an identification license must be employed in a licensed establishment or enterprise. The licensee shall be responsible for following all sanitary and safety rules promulgated by the board and must comply with local ordinances and licensing requirements.~~

~~C. An identification license may only be used for purposes authorized in these rules. Any other use may lead to revocation of the identification license, fine, or other disciplinary action.~~

~~D. An identification license must be carried with the licensee when performing authorized services.]~~

[RESERVED]

[16.34.4.11 NMAC - Rp 16 NMAC 34.4.11, 06-16-01; Repealed, 04/12/10]

16.34.4.13 ~~Q U A L I F I E D~~ ~~INSTRUCTORS~~

A. An eligible applicant may be issued an instructor license provided he submits a transcript for a 1000-hour instructor training course or proof of two years work experience and passes the instructor licensing examination which can be taken only once for multiple license.

B. A provisional instructor license will be issued to an eligible applicant who meets the board requirements and has completed three full years of current verified full time work experience as a practitioner in the field in which he/she seeks licensure as an instructor under the following terms and conditions:

(1) The work experience must be current to ensure up-to-date knowledge in the field in which the applicant seeks provisional licensure.

(2) The provisional license will be effective until the next renewal period of March thirty-one.

(3) The provisional license will only be renewed twice upon completion

of the required continuing education in professional development and the required fee as set forth by board rules.

(4) To obtain an instructor license, the holder of a provisional instructor license must complete an examination application and pass the instructor licensing examination. Failing any portion of the instructor examination automatically voids the provisional instructor license. The provisional license must then be returned to the board office.

(5) The holder of a provisional instructor license must sit for the licensing examination prior to the expiration of the provisional license.

(6) No more than fifty percent of the total instructional staff at any licensed school in the state of New Mexico may be licensed under this category. When determining ratios, more than one part-time provisional instructor may be combined to count as one instructor.

[16.34.4.13 NMAC - Rp 16 NMAC 34.4.13, 06-16-01; A, 10-04-07; A, 04/12/10]

16.34.4.14 ~~S T U D E N T~~ ~~[PERMITS] PERMIT LICENSE:~~

Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within fifteen days of date of registration, the board will issue a student permit and permit number. The student permit authorizes the holder to practice course related skills in an approved school and perform services on the public only after fifteen percent of the required hours for graduation from the course of study are accrued. Student permits are the property of the board and must be returned to the board office with the notice of termination or official transcript of credit by the school. Additional requirements applicable to student permits are found in Subsection A, Paragraph 7 of 16.34.8.13 NMAC of these rules.

[16.34.4.14 NMAC - Rp 16 NMAC 34.4.14, 06-16-01; A, 07-16-04; A, 10-04-07; A, 04/12/10]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.6 NMAC, Section 8, effective April 12, 2010.

16.34.6.8 ~~RECIPROCITY~~

A. An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules.

B. **CREDIT FOR WORK EXPERIENCE.** Applicants who have not completed a course of study equivalent to

the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal one-hundred-fifty hours of training. Work experience less than six full months will not be considered toward training hours. To obtain any license by reciprocity, no more than fifty percent of the hours required for licensure by in-state applicants may be obtained by work experience. Apprenticeship training hours shall be considered on an individual case basis and will not be credited for more than fifty percent of the hours required for licensure by in-state applicants.

C. **FULL HOURS OR WORK EXPERIENCE, OUT-OF-STATE LICENSE.** Any person who seeks licensure in the state of New Mexico through reciprocity from any other state shall:

(1) furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with the state;

(2) furnish a certified transcript for the course of study or affidavit of hours from the regulatory agency or school attended in the state from which the applicant is applying;

(3) complete the application for reciprocity on a form provided by the board and submit the required fee; and

(4) furnish notarized letters of employment from past employers or employment records to prove work experience as stated in B of this section, if needed.

D. **FOREIGN TRAINING:** All foreign trained applicants must submit to the applicable examination. Refer to 16.34.3 NMAC for requirements.

E. **I N C O M P L E T E HOURS, OUT OF STATE LICENSE.**

(1) An applicant who holds a valid license in another state and who needs additional training not in excess of 100 hours may obtain the training hours in any state. Upon submitting proof of having acquired the additional training hours, the applicant may then be licensed through reciprocity.

(2) An applicant licensed in a state where the course of study is not equivalent to New Mexico's may apply work experience or apprenticeship training hours, on a case by case basis, toward the training requirements as stated in Subsection B of 16.34.6.8 NMAC, provided these hours do not exceed fifty percent of the required hours in New Mexico. If the allowed hours credited from work experience or apprenticeship training meet or exceed the equivalent of the New Mexico course of study, the applicant may obtain licensure through reciprocity.

(3) An applicant who cannot obtain a license through reciprocity with the previous training and work experience, he will be required to obtain approval of the previous hours of training as stated in Subsection I of 16.34.6.8 NMAC, obtain the additional hours needed and submit to the New Mexico licensing examination applicable to the license he is seeking.

F. In order to expedite the process of approving training hours and work experience for reciprocity applicants and transfer students, the board executive director may forward required documents to a member of the board who is also a licensee for approval.

G. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of 75% or greater.

[16.34.6.8 NMAC - Rp 16 NMAC 34.6.8, 06-16-01; A, 10-04-07; A, 04/12/10]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.14 NMAC, Section 8, effective April 12, 2010.

16.34.14.8 FEES: The fees for examination, original licensure and annual renewal, licensure by reciprocity and special fees are as follows:

A.	Enterprise or establishment license (original).....	[\$125.00] \$200.00
B.	Enterprise or establishment license (renewal).....	[\$ 45.00] \$50.00
C.	Booth establishment license (original).....	[\$125.00] \$200.00
D.	Booth establishment license (renewal).....	[\$ 45.00] \$50.00
E.	School license (original and renewal).....	[\$435.00] \$500.00
F.	Relocation of a school.....	\$185.00
G.	Barber license (original and renewal).....	[\$ 25.00] \$50.00
H.	Cosmetologist license (original and renewal).....	[\$ 25.00] \$50.00
I.	Manicurist/pedicurist license (original and renewal).....	[\$ 25.00] \$50.00
J.	Manicurist/esthetician license (original and renewal).....	[\$ 25.00] \$50.00
K.	Electrologist license (original and renewal).....	[\$ 25.00] \$50.00
L.	Esthetician license (original and renewal).....	[\$ 25.00] \$50.00
M.	Instructor license (original and renewal).....	[\$ 25.00] \$50.00
N.	Reciprocity (original).....	[\$125.00] \$150.00
O.	Administrative fee (other examination administrative costs).....	a maximum of \$100.00
[P.]	Administrative fee (lists).....	\$ 65.00
[Q.] P.	Administrative fee (lists on disks).....	\$ 95.00
[R.] Q.	Administrative fee (relocation of establishments, etc.).....	\$ 25.00
[S.]	Lists on address labels (list fee plus actual cost of labels)	
[T.]	Transcript fee.....	\$ 15.00
[U.] R.	Examinations and re-examinations all licenses except instructor.....	a maximum of \$100.00
[V.] S.	Instructor examination and re-examination.....	a maximum of \$100.00
[W.] T.	Duplicate licenses.....	[\$15.00] \$25.00
[X.] U.	Student [registration - any course] permit license.....	[\$15.00] \$25.00
[Y.]	Identification license.....	\$ 25.00
[Z.] V.	Late fee.....	[\$ 35.00] \$40.00
[AA.] W.	Provider approval, initial and renewal.....	\$ 50.00

[16.34.14.8 NMAC - Rp 16 NMAC 34.14.8, 06-16-01; A, 07-16-04; A, 10-04-07; A, 04/12/10]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.15 NMAC, Section 8, effective April 12, 2010.

16.34.15.8 ADMINISTRATIVE PENALTIES AND FINES

A. Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one thousand dollars for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay

a fine, once properly assessed, may result in an additional fine [and/or] or revocation of license or other disciplinary action. The penalties to be assessed are as follows:

B. Failure to comply with establishment requirements:

(1) first offense: [one hundred dollars:] two hundred dollars

(2) second offense: [three hundred dollars:] four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

C. Failure to comply with sanitation and safety requirements for establishments:

(1) first offense: warning from

inspector/"board"

(2) second offense: [one hundred dollars:] two hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

D. Failure to post required licenses:

(1) first offense: [fifty dollars:] one hundred fifty dollars

(2) second offense: [three hundred dollars:] four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New

Mexico Uniform Licensing Act.

E. Working on an expired or invalid license:

(1) first offense: ~~[fifty dollars:]~~ one hundred fifty dollars

(2) second offense: ~~[three hundred dollars:]~~ four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

F. Performing services for compensation in an unlicensed establishment:

(1) first offense: ~~[three hundred dollars:]~~ five hundred dollars

(2) second offense: ~~[five hundred dollars:]~~ six hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

G. Failure by a school to properly and timely register all students:

(1) first offense: ~~[one hundred dollars:]~~ two hundred dollars

(2) second offense: ~~[three hundred dollars:]~~ four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

H. Committing any of the causes listed in 61-17A-21 not otherwise addressed in these rules:

(1) first offense: ~~[one hundred dollars:]~~ two hundred dollars

(2) second offense: ~~[three hundred dollars:]~~ four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

I. Student loan default is defined as "the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the lender or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for one hundred eighty days."

J. Official notice of default: The board shall take steps to impose a fine up to nine hundred ninety nine dollars or take other disciplinary action as permitted by the act or the Uniform Licensing Act which may include suspension, revocation or failure to renew a license.

[16.34.15.8 NMAC - Rp 16 NMAC 34.15.8, 06-16-01; A, 04/12/10]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.36.2 NMAC, Sections 11, 14, 15 and 16, effective April 12, 2010.

16.36.2.11 APPLICATION FOR BODY ART OPERATOR ESTABLISHMENT LICENSE

A. Any establishment licensed by the board must be under the immediate supervision of a board licensed practitioner while licensed activity is being practiced therein.

B. The supervising licensee(s) must be licensed by the board in each aspect of the licensed activity being practiced in the establishment during the time licensee is in charge (e.g. tattoo, piercing, permanent cosmetics or scarification).

C. Application forms:

(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) name of the body art establishment;

(c) name of the operator of the establishment;

(d) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(e) mailing address;

(f) physical business address;

(g) business phone number;

(h) name(s) of the body art supervising practitioner(s) working at the establishment;

(i) non-refundable application fee as required by the board in the form of a money order, cashier's check, business check, or credit card, (no personal checks will be accepted).

[16.36.2.11 NMAC - N, 05/16/2008; A, 04/12/2010]

16.36.2.14 TATTOO OR BODY PIERCING-SCARIFICATION APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS

A. An applicant for original tattoo or piercing-scarification practitioner license shall provide proof, acceptable to the board or its designee, that applicant

has completed [a theory curriculum and] a 1500 hour apprenticeship program under the direct supervision of a licensed practitioner with instruction and experience in the kind of body art for which the applicant seeks a body art practitioner license.

[B. ~~Tattoo and body piercing-scarification theory shall be taught over a minimum of 40 hours and shall include the following requirements:~~

~~(1) Microbiology:~~

~~(a) microorganisms, viruses, bacteria, fungi;~~

~~(b) transmission cycle of infectious diseases; and~~

~~(c) characteristics of antimicrobial agents;~~

~~(2) Immunization:~~

~~(a) types of immunizations; and~~

~~(b) general preventative measures to protect the apprentice and client;~~

~~(3) Sanitation and disinfection:~~

~~(a) definition of terms;~~

~~(b) use of steam sterilization equipment and techniques;~~

~~(c) use of chemical agents, antiseptics, disinfectants, and fumigants;~~

~~(d) use of sanitation equipment;~~

~~(e) preservice sanitation procedure; and~~

~~(f) post-service sanitation procedure;~~

~~(4) Safety:~~

~~(a) proper needle handling and disposal;~~

~~(b) how to avoid overexposure to chemicals;~~

~~(c) use of material safety data sheets;~~

~~(d) blood spill procedures;~~

~~(e) equipment and instrument storage; and~~

~~(5) Bloodborne pathogen standards:~~

~~(a) OSHA bloodborne pathogen standards;~~

~~(b) control plan for bloodborne pathogens;~~

~~(c) exposure control plan;~~

~~(d) overview of compliance requirements; and~~

~~(e) disorders and when not to service a client;~~

~~(6) Professional standards:~~

~~(a) client preparation;~~

~~(b) recordkeeping;~~

~~(c) client health history;~~

~~(d) consent and disclosure forms;~~

~~(e) sanitation and safety precautions;~~

~~(f) HIPAA (Health Insurance Portability and Accountability Act of 1996 Privacy Rule) standards;~~

~~(g) implement selection and use;~~

~~(h) proper use of equipment;~~

~~(i) material selection and use;~~

~~(j) needles.~~

(7) Anatomy:
 (a) understanding of skin; and
 (b) parts and functions of skin.
 (8) New Mexico laws and regulations.

(9) Tattoo apprentice shall also complete the following:

(a) pigments and color mixing;
 (b) machine: construction, adjustment and power supply;
 (c) art, drawing; and
 (d) portfolio.]

[C:] B. Proof of completing 1500 hour apprentice program shall include:

(1) verification of completion of apprenticeship program on form provided by the board;

(2) a minimum of 10 original photographs of healed tattoos or piercings-scarifications which the artisan has personally performed and a minimum of three signed testaments from previous clients.

C. Body piercing apprenticeship curriculum:

(1) Orientation: 200 hours:
 (a) state laws and regulations;
 (b) tax and business license requirements;

(c) OSHA bloodborne pathogens standard;

(d) the establishment's exposure control plan;

(e) MSDS sheets;

(f) paperwork and business documentation;

(g) HIPAA (Health Insurance Portability and Accountability Act of 1996 privacy rule);

(h) environment/appropriate studio set-up;

(i) professional image;

(j) appropriate communication with clients;

(k) ethics and legalities:

(i) minors;

(ii) drugs and alcohol;

(iii) medical conditions/

risk assessment;

(iv) personal boundaries;

(l) dealing with emergencies:

(i) blood spills;

(ii) fainting;

(iii) bleeding;

(iv) needlesticks;

(v) other exposures.

(2) Sterilization, disinfection theory and practical: 200 hours:

(a) microbiology;

(b) definitions;

(c) microorganisms of the skin;

(d) factors that influence the survival and growth of microorganisms;

(e) breaking the chain of infection;

(f) infection control;

(g) handwashing;

(h) types of soaps and hand

sanitizers;

(i) use of gloves and other personal protective equipment;

(j) how to recognize, prevent and remedy cross-contamination;

(k) immunizations;

(l) cleaning, disinfection and sterilization;

(m) sterile chart;

(n) cleaning/appropriate procedures;

(o) implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;

(p) disinfection/appropriate use and disposal of disinfecting solutions;

(q) sterilization/appropriate use and maintenance of autoclave sterilizers.

(3) Body piercing theory-100 hours:

(a) jewelry;

(b) standards and certifications;

(c) certified materials for new piercings;

(d) other appropriate materials for new piercings;

(e) jewelry materials for healed piercings;

(f) jewelry to avoid;

(g) quality jewelry (things to look for);

(h) jewelry styles;

(i) cleaning, sterilization and storage of jewelry;

(j) anatomy;

(k) understanding of skin;

(l) parts and functions of skin;

(m) oral/facial anatomy as it

pertains to piercing;

(n) body anatomy as it pertains to piercing;

(o) determining the appropriateness of a piercing;

(p) equipment;

(q) disposable supplies;

(r) needles;

(s) sharps disposal;

(t) reusable equipment;

(u) storage;

(v) aftercare;

(w) piercing guns (theory only).

(4) Body piercing observation/

practical-1000 hours:

(a) proper use of safety procedures

outlined in theory training;

(b) aseptic technique;

(c) room set-up and break-down;

(d) skin preparation;

(e) client relations/relaxation

techniques;

(f) pain management;

(g) piercing techniques;

(h) dealing with mistakes;

(i) in order to be approved,

curriculum for body piercing technician

training shall include, at a minimum,

50 practical operations observed by the

apprentice, 50 practical operations in which

the apprentice participated, and 50 practical operations performed by the apprentice under supervision, but without assistance; the 50 unsupervised completed procedures shall consist of at least five completed procedures in each of the following areas:

(i) ears;

(ii) nose;

(iii) tongue;

(iv) nipple;

(v) navel;

(vi) eyebrow;

(vii) lip/labret;

(j) curriculum should include the following for each procedure:

(i) related anatomy;

(ii) appropriate

placement;

(iii) skin preparation;

(iv) implement selection

and use;

(v) techniques;

(vi) healing and

aftercare.

D. Tattoo apprenticeship curriculum:

(1) Orientation: 200 hours:

(a) state laws and regulations;

(b) tax and business license

requirements;

(c) OSHA bloodborne pathogens

standard;

(d) the establishment's exposure

control plan;

(e) MSDS sheets;

(f) paperwork and business

documentation;

(g) HIPAA (Health Insurance

Portability and Accountability Act of 1996

privacy rule);

(h) environment/appropriate

studio set-up;

(i) professional image;

(j) appropriate communication

with clients;

(k) ethics and legalities;

(i) minors;

(ii) drugs and alcohol;

(iii) medical conditions/

risk assessment;

(iv) personal boundaries;

(1) dealing with emergencies:

(i) blood spills;

(ii) fainting;

(iii) bleeding;

(iv) needlesticks;

(v) other exposures.

(2) Sterilization, disinfection

theory and practical: 200 hours:

(a) microbiology;

(b) definitions;

(c) microorganisms of the skin;

(d) factors that influence the survival and growth of microorganisms;

(e) breaking the chain of infection;

(f) infection control;

(g) handwashing;

(h) types of soaps and hand sanitizers;

(i) use of gloves and other personal protective equipment;

(j) how to recognize, prevent and remedy cross-contamination;

(k) immunizations;

(l) cleaning, disinfection and sterilization;

(m) sterile chart;

(n) cleaning/appropriate procedures;

(o) implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;

(p) disinfection/appropriate use and disposal of disinfecting solutions;

(q) sterilization/appropriate use and maintenance of autoclave sterilizers.

(3) Tattooing theory-100 hours:

(a) artistic development;

(b) drawing for clients;

(c) stencil making and application;

(d) color theory/understanding the color wheel;

(e) line quality and proportion;

(f) shading and coloring technique;

(g) pigments and color mixing;

(h) portfolio construction and maintenance;

(i) anatomy;

(j) understanding of skin;

(k) parts and functions of skin;

(l) determining the appropriateness of a tattoo placement;

(m) equipment;

(n) disposable supplies;

(o) needles;

(p) sharps disposal;

(q) reusable equipment;

(r) storage;

(s) tattoo equipment maintenance;

(t) understanding the electromagnetic tattoo machine and it's history;

(u) liner/shader set-up;

(v) quality and conductivity of metals used in tattoo machines;

(w) spring gauges and maintenance;

(x) the difference between long stroke/short stroke technique;

(y) tattoo machine schematics, electronics and constructions;

(z) tuning and adjustment of machines;

(aa) understanding current/voltage and reciprocation response;

(bb) needle-making safety and construction;

(cc) aftercare.

(4) Tattooing observation/practical-1000 hours:

(a) proper use of safety procedures outlined in theory training;

(b) aseptic technique;

(c) room set-up and break-down;

(d) skin preparation;

(e) client relations/relaxation techniques;

(f) pain management;

(g) tattooing techniques;

(h) line quality and solid color techniques;

(i) pigment and implementation selection and use;

(j) needle depth and machine/hand speed coordination;

(k) dealing with mistakes;

(l) bandaging techniques.

[D-] E. Applicants engaged in the tattoo or body piercing-scarification business before [November 12, 2008] May 16, 2008 may submit notarized letters of employment from past employers or employment records as substitution for an apprenticeship to prove completion of at least 1500 hours of actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner license.

F. An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules. A body artist licensed in another jurisdiction must submit a verification of licensure from jurisdiction verifying that the artist holds a current license and is in good standing.

[E-] G. An applicant for a body art tattoo, piercing-scarification practitioner license shall take the tattoo or body piercing-scarification exam approved by the board with a passing score approved by the board. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program.

[16.36.2.14 NMAC - N, 05/16/2008; A, 04/12/2010]

16.36.2.15 APPRENTICE SPONSOR

A. Upon filling an application with the board a licensee may be approved to sponsor a tattoo or body piercing-scarification apprentice if the licensee:

(1) holds a New Mexico tattoo or body piercing-scarification license;

(2) provides documentation of legally practicing tattoo or body piercing-scarification for at least five years without any board sanctioned disciplinary action; and

(3) provides a curriculum as required in 16.36.2.14 NMAC to the board for approval.

B. [Theory curriculum may be taught in groups. However, the practical experience shall be one-on-one with no

more than one apprentice working under the sponsor's supervision.] It shall constitute a violation of the rules, within the meaning of the act, for a school to engage in failure to transmit apprentice documents in a timely fashion to the board.

[16.36.2.15 NMAC - N, 05/16/2008; A, 04/12/2010]

16.36.2.16 PERMANENT COSMETIC TRAINING AND EXAMINATION REQUIREMENTS

A. The permanent cosmetic professional applicant shall have completed a [60] 100 hour training program approved by the board, and shall perform under the direct supervision of a board approved practitioner a minimum of 40 hours and shall include the following requirements:

(1) Microbiology:

(a) microorganisms, viruses, bacteria, fungi;

(b) transmission cycle of infectious diseases; and

(c) characteristics of antimicrobial agents.

(2) Immunization:

(a) types of immunizations; and

(b) general preventative measures to protect the apprentice and client.

(3) Sanitation and disinfection:

(a) definition of terms;

(b) use of steam sterilization equipment and techniques;

(c) use of chemical agents, antiseptics, disinfectants, and fumigants;

(d) use of sanitation equipment;

(e) preservice sanitation procedure; and

(f) post-service sanitation procedure.

(4) Safety:

(a) proper needle handling and disposal;

(b) how to avoid overexposure to chemicals;

(c) use of material safety data sheets;

(d) blood spill procedures;

(e) equipment and instrument storage.

(5) Bloodborne pathogen standards.

(a) OSHA bloodborne pathogen standards;

(b) control plan for bloodborne pathogens;

(c) exposure control plan;

(d) overview of compliance requirements; and

(e) disorders and when not to service a client.

(6) Professional standards:

(a) client preparation;

(b) recordkeeping;

(c) client health history;

(d) consent and disclosure forms;

(e) sanitation and safety precautions;

(f) HIPAA (Health Insurance Portability and Accountability Act of 1996 Privacy rule) standards;

(g) implement selection and use;

(h) proper use of equipment;

(i) material selection and use;

(j) needles.

(7) Anatomy;

(a) understanding of skin; and

(b) parts and functions of skin.

(8) New Mexico laws and regulations.

[A:] B. A minimum of five of each of the following procedures:

(1) eye brow simulation;

(2) lip liner;

(3) lip color; and

(4) eye liner/eyelash enhancer.

[B:] C. Client records shall be maintained by the practitioner applicant to verify that the minimum requirements for the procedures were completed.

[C:] D. The practitioner applicant shall submit a minimum of one photograph whereby the professional has personally performed one complete procedure for each of the following areas:

(1) eye brow simulation;

(2) lip liner;

(3) lip color; and

(4) eye liner/eyelash enhancer.

[D:] E. A practitioner performing areola restoration shall have completed a training program approved by the board.

[E:] F. An applicant for a permanent cosmetic professional license shall take an exam approved by the board with a passing minimum score approved by the board.

[16.36.2.16 NMAC - N, 05/16/2008; A, 04/12/2010]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.36.4 NMAC, Section 8, effective April 12, 2010.

16.36.4.8 ENFORCEMENT, COMPLAINTS AND DISCIPLINARY ACTION

A. A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act and the Body Art Safe Practices Act.

B. It shall be unlawful for any artist to perform body piercing or tattoo procedures outside of a licensed body piercing or tattooing establishment.

C. It shall constitute a violation of the Body Art Safe Practices Act when a licensee:

(1) attempts by means of any threat, force, intimidation or violence to deter, interfere with or prevent any inspector or board designee from performing any official duty of the department or board;

(2) willfully resists, delays or obstructs an inspector or board designee in the performance of his/her official duty;

(3) fails to comply with the lawful command of an inspector or board designee in the discharge of his/her official duty; or

(4) fails to cooperate in investigations, proceedings, and requirements of this code.

D. The board, or its designee, will consider a formal complaint filed against a licensee or an establishment provided the complaint is on the proper form, signed and notarized.

E. When a complaint is received on the proper form, the board, or its designee, will write to the licensee the complaint is against and request a response within fifteen days of receipt of such request.

F. The response will be reviewed by a committee designated by the board chairman.

G. If the committee's recommendation is that the complaint be taken before the board, the complaint will be reviewed at the next regularly scheduled board meeting. The board shall:

(1) take no further action; or

(2) issue a notice of contemplated action (NCA) under the Uniform Licensing Act; or

(3) assess an administrative penalty subject to appropriate procedural requirements and safeguards.

H. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Body Art Safe Practices Act.

I. The board may fine, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the act, the Uniform Licensing Act, or these rules.

J. Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than ~~[one thousand dollars (\$1000)]~~ one hundred fifty dollars (\$150) for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine and revocation of license or other disciplinary action. The penalties to be assessed are as follows:

(1) Failure to comply with operator requirements:

(a) first offense: one hundred dollars (\$100)

(b) second offense: ~~[three hundred dollars (\$300)]~~ one hundred fifty dollars (\$150)

(c) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of ~~[nine hundred ninety nine dollars (\$999)]~~ one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

(2) Failure to comply with sanitation and safety requirements:

(a) first offense: ~~[warning from inspector/board]~~ one hundred dollars (\$100)

(b) second offense: ~~[one hundred dollars (\$100)]~~ one hundred fifty dollars (\$150)

(c) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of ~~[nine hundred ninety nine dollars (\$999)]~~ one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

(3) Failure to post required licenses:

(a) first offense: fifty dollars (\$50)

(b) second offense: ~~[three hundred dollars (\$300)]~~ one hundred fifty dollars (\$150)

(c) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of ~~[nine hundred ninety nine dollars (\$999)]~~ one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

(4) Working on an expired or invalid license:

(a) first offense: fifty dollars (\$50)

(b) second offense: ~~[three hundred dollars (\$300)]~~ one hundred fifty dollars (\$150)

(c) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of ~~[nine hundred ninety nine dollars (\$999)]~~ one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act

(5) Performing services for compensation in an unlicensed establishment:

(a) first offense: ~~[three hundred dollars (\$300)]~~ one hundred dollars (\$100)

(b) second offense: ~~[five hundred dollars (\$500)]~~ one hundred fifty dollars (\$150)

(c) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of ~~[nine hundred ninety nine dollars (\$999)]~~ one hundred fifty

dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

(6) Any violation of the Body Art Safe Practices Act or rules:

(a) first offense: one hundred dollars (\$100)

(b) second offense: ~~three hundred dollars (\$300)~~ one hundred fifty dollars (\$150)

(c) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of ~~[nine hundred ninety-nine dollars (\$999)]~~ one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

K. The board may suspend a license immediately without prior notice to the holder of the license if it determines, after inspection, that conditions within a body art establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize a body art establishment. A suspension action taken pursuant to this section is effective when communicated to the operator or body artist. Suspension action taken pursuant to this section shall not continue beyond the time that the conditions causing the suspension cease to exist, as determined by a board inspection at the request of the operator or body artist. A license holder may request an administrative hearing, as provided by Section 5 [61-17B-5 NMSA 1978] of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within ten days.

[16.36.4.8 NMAC - N, 05/16/2008; A, 04/12/2010]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

Notice of Repeal

8.8.2 NMAC, Protective Services General Policies, filed 11-1-2005 is hereby repealed and replaced by 8.8.2 NMAC, Protective Services General Policies, effective 3-31-2010.

8.10.2 NMAC, Protective Services Intake, filed 11-1-2005 is hereby repealed and replaced by 8.10.2 NMAC, Protective Services Intake, effective 3-31-2010.

8.10.3 NMAC, Child Protective Services Investigation, filed 5-31-2006 is hereby repealed and replaced by 8.10.3 NMAC, Protective Services Investigation, effective 3-31-2010.

8.10.7 NMAC, Child Protective Legal

Services, filed 11-1-2005 is hereby repealed and replaced by 8.10.7 NMAC, Protective Services Legal, effective 3-31-2010.

8.10.9 NMAC, Independent Living Program, filed 8-15-2007 is hereby repealed and replaced by 8.10.9 NMAC, Youth Services, effective 3-31-2010.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS PART 2 PROTECTIVE SERVICES GENERAL POLICIES

8.8.2.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD), Protective Services Division (PSD).

[8.8.2.1 NMAC - Rp, 8.8.2.1 NMAC, 03/31/10]

8.8.2.2 SCOPE: Protective services staff and the general public.

[8.8.2.2 NMAC - Rp, 8.8.2.2 NMAC, 03/31/10]

8.8.2.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, Section 9-2A-7 D, NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Cum. Supp. 2009); and New Mexico Children's Court Rules SCRA 10-1 et seq.

[8.8.2.3 NMAC - Rp, 8.8.2.3 NMAC, 03/31/10]

8.8.2.4 DURATION: Permanent.

[8.8.2.4 NMAC - Rp, 8.8.2.4 NMAC, 03/31/10]

8.8.2.5 EFFECTIVE DATE: March 31, 2010 unless a later date is cited at the end of a section.

[8.8.2.5 NMAC - Rp, 8.8.2.5 NMAC, 03/31/10]

8.8.2.6 OBJECTIVE: To establish policies for the administrative functioning of the protective services division.

[8.8.2.6 NMAC - Rp, 8.8.2.6 NMAC, 03/31/10]

8.8.2.7 DEFINITIONS:

A. "Administrative hearing" means a formal process, where the client has an opportunity to present evidence

to an impartial hearing officer.

B. "Administrative review" is an informal process, which may include an informal conference or may include only a record review. The administrative review does not create any substantive rights for the client.

C. "Adolescent and adoption resource team (AART)" provides a quality assurance function for the CYFD protective services division (PSD) by reviewing, amending, and approving individual plans for children in custody ensure timely movement toward adoption and permanence and for adolescents to ensure successful transition into adulthood.

D. "AFCARS" refers to the federally-required automated foster care and adoptions reporting system. States are required to submit AFCARS data semi-annually. This includes case level information on all children in PSD custody, children who are adopted under the auspices of PSD, and information on foster and adoptive parents.

E. "Child abuse and neglect check" is a review of the family automated client tracking system (FACTS), the PSD information management system, to determine if there have been any referrals of alleged child abuse or neglect to protective services division.

F. "Children's Code" refers to the New Mexico Children's Code, Section 32A-1-1, et. seq., NMSA 1978.

G. "Client" means a person who is receiving services from PSD.

H. "Communicable disease" means any infectious disease that is both potentially communicable through common social or sexual contact and poses a significant health risk if contracted.

I. "Criminal records check (CRC)," as discussed herein, means federal, state or local checks for criminal offenses conducted on PSD employees as well as volunteers and students working in a PSD office. The level of CRC depends on duties performed, as per 8.8.2.22 NMAC herein. Requirements for CRC in reference to foster or adoptive parents are outlined in "Licensing Requirements for Foster and Adoptive Homes," 8.26.4.10 NMAC.

J. "CYFD" refers to the children, youth and families department.

K. "FACTS" refers to the family automated client tracking system (FACTS), the official data management system for CYFD.

L. "NCANDS" refers to the national child abuse and neglect data system (NCANDS), a voluntary national data collection and analysis system created in response to the requirements of the Child Abuse Prevention and Treatment Act.

M. "Need to know" is the standard by which individual(s) are

identified as required to receive confidential information, based upon risk of transmission of a specific disease.

N. "Policies" are those regulations that govern CYFD activities and have the force of law.

O. "Procedures" direct PSD staff in how to implement policies.

P. "Protective services division (PSD)" refers to the protective services division of the children, youth and families department, and is the state's designated child welfare agency.

Q. "Provider" refers to foster care and adoptive families.

R. "SACWIS" means the statewide automated child welfare information systems (SACWIS), a comprehensive automated case management tool that supports foster care and adoptions assistance case management practice. FACTS is the state of New Mexico's SACWIS system.

S. "Secretary" means the secretary of CYFD.

T. "Stipend students" are students in an undergraduate or graduate social work program in New Mexico who have been selected to receive stipends to support their education in return for working for PSD for a specified period of time.

U. "Universal precautions" are the standardized protocols for the prevention of communicable disease.

V. "Vendor" refers to individuals or businesses from which PSD purchases goods and services for the needs of our clients.

[8.8.2.7 NMAC - Rp, 8.8.2.7 NMAC, 03/31/10]

8.8.2.8 PROTECTIVE SERVICES DIVISION: The protective services division is New Mexico's officially designated child welfare agency, responsible for providing child protective services to individuals and families.

A. PSD shall be responsible for administering and supervising the state of New Mexico's child welfare services plan pursuant to Section 422(a) of the Social Security Act, 42 U.S.C. 622(a), and the agency responsible for the state plans under Title IV-B and IV-E of the Social Security Act and the social services block grant program pursuant to Title XX.

B. The protective services division shall maintain community based offices and maintains a toll free number that is posted in protective services division offices. Access to emergency protective services is available twenty-four (24) hours a day, seven (7) days a week.

[8.8.2.8 NMAC - Rp, 8.8.2.8 NMAC, 03/31/10]

8.8.2.9 LEGAL AUTHORITY

AND GUIDELINES: PSD and its contractors shall provide services and issue licenses and certifications in accordance with federal and state constitutional, statutory and regulatory requirements, without regard to race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity in accordance with law.

[8.8.2.9 NMAC - Rp, 8.8.2.10 NMAC, 03/31/10]

8.8.2.10 INTERAGENCY AND INTEROFFICE COLLABORATION AND COOPERATION:

A. PSD shall work with the other service areas within CYFD and other state and local agencies to enhance the provision of services to clients.

B. PSD county offices shall work together to provide one another with mutual support and assistance, including, but not limited to, providing cross-county interviews, home studies and supervision.

[8.8.2.10 NMAC - Rp, 8.8.2.19 NMAC, 03/31/10]

8.8.2.11 POLICY AND PROCEDURES DEVELOPMENT AND REVIEW:

A. PSD shall hold a public hearing prior to the inclusion, amendment or repeal of any portion of the New Mexico administrative code in accordance with the State Rules Act.

B. PSD shall file policies with the New Mexico state records center and archives in accordance with the State Rules Act.

C. Emergency rules:

(1) For good cause, PSD may issue rules on an emergency basis without notice or hearing if the secretary determines that the immediate implementation is necessary for public peace, health, safety, or general welfare. An emergency rule is effective for no longer than thirty (30) days unless published in the New Mexico Register in accordance with 1.24.20 NMAC. Upon publication in the New Mexico register, emergency rules are converted to regular rules with such duration as stated in the published rule.

(2) Under CYFD's enabling statute, 9-2A-2(E) NMSA, PSD may also engage in "interim rule making," if the CYFD secretary certifies to the department of finance and administration that the CYFD has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary.

D. Maintenance of policies: PSD shall regularly review policies and make revisions as necessary to reflect changes in practice to comply with federal and state laws as well as changes in CYFD

standards of practice and funding. PSD shall consider requests for revisions to policies by any individual. Revisions to policies shall be made as provided by statute and regulations.

E. PSD policies are published in the New Mexico administrative code, which is available at <http://www.nmcpr.state.nm.us/NMAC> under Title 8, Social Services. Copies of policies and procedures are available for public inspection in PSD county offices; reasonable copying charges are assessed for duplication.

[8.8.2.11 NMAC - Rp, 8.8.2.11 NMAC, 03/31/10]

8.8.2.12 PROVISION OF SERVICES:

A. PSD shall make reasonable efforts to protect reported children from abuse and neglect, and when safely possible, to preserve the integrity of the family unit.

B. Provision of services is based upon the results of the assessment of the safety of the child, an assessment of the risk to and needs and strengths of the individual and family, and the availability of services.

C. Services shall be provided in a setting most consistent with the least restrictive alternatives and the case plan developed.

D. Provision of services shall not be dependent upon income certification or recertification for persons receiving the following services:

- (1) child protective services;
- (2) youth services;
- (3) in-home services;
- (4) child protective services

childcare;

- (5) permanency planning service for children; or

- (6) adoption services for children.

E. PSD shall provide services in accordance with the Americans with Disabilities Act (ADA).

F. There shall be no residency or citizenship requirements for the provision of protective services.

G. Protective services shall be provided when indicated (see Subsection B above) to children who are infected with a communicable disease. PSD staff and providers use universal precautions for the prevention of communicable disease.

[8.8.2.12 NMAC - Rp, 8.8.2.13 NMAC, 03/31/10]

8.8.2.13 ADMINISTRATIVE APPEALS:

PSD shall provide a client with either an administrative review or an administrative hearing to appeal a PSD decision, as appropriate. The outcome of an administrative review or hearing is final except as otherwise provided by law.

A. Administrative review:

(1) An administrative review shall be used in the following instances:

(a) removal of foster children when the children have been in placement with the family for longer than six (6) months;

(b) removal of adoptive children prior to finalization;

(c) denial of adoption or foster home application;

(d) denial of transition support services;

(e) the substantiation of an abuse or neglect investigation unless the issue is in litigation in a pending children's court case;

(f) the substantiation of a past abuse or neglect investigation that has been revealed by a present criminal record check where the records fails to show that PSD provided notice or an opportunity for a review, unless the issue was litigated in a children's court case; or

(g) denial of certification as an independent investigator or adoption counselor.

(2) A client seeking an administrative review shall request the review either orally or in writing to PSD within ten (10) days of the action or notice of the proposed action.

B. Administrative hearing: An administrative hearing shall be used in the following instances:

(1) the revocation, suspension, or non-renewal of a foster home licensed by PSD (as specified in 8.26.4 NMAC); or

(2) the denial, non-renewal, probation, suspension, or revocation of a child placement agency license (as specified in 8.26.5 NMAC).

[8.8.2.13 NMAC - Rp, 8.8.2.17 NMAC, 03/31/10]

8.8.2.14 DATA COLLECTION AND MANAGEMENT INFORMATION:

PSD shall collect client and services information and records that information in the agency's management information system, family automated client tracking system (FACTS).

A. FACTS is the state of New Mexico's SACWIS system and shall be used to conform with federal NCANDS and AFCARS reporting requirements.

B. PSD shall produce reports containing statewide or county-based data for use in monitoring and tracking performance and outcomes.

[8.8.2.14 NMAC - N, 03/31/10]

8.8.2.15

CONFIDENTIALITY: All PSD staff and CFYD contractors shall maintain confidentiality of records and information in accordance with the laws and regulations that apply to specific services.

A. Abuse and neglect

records: Abuse and neglect records are confidential pursuant to the New Mexico Children's Code 32A-4-33(A) NMSA. CYFD may release the identity of a reporting party only with the reporting party's consent or with a court order (See Protective Services Legal Policies, Subsection A of 8.10.7.10 NMAC).

B. Foster care and adoption records: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA, the confidentiality provisions of the Children's Code, Sections 32A-3B-22 and 32A-4-33 NMSA, the specific authority related to certification of foster homes, Section 40-7-4 (D) and the Adoption Act, Sections 32A-5-6 and 32A-5-8 NMSA, all client case records and client identifying information including foster and adoptive families, and applicant files are confidential and may not be publicly disclosed. PSD may release such files only upon a valid court order provided that confidential criminal and abuse and neglect information may not be released, unless a court order specifically orders such a release.

C. Records related to an adoption proceeding: Records related to an adoption proceeding are confidential pursuant to the Children's Code, Section 32A-5-8 NMSA. Post decree adoption records: Guidance on obtaining access of post decree adoption records by an adult adoptee, biological parent of an adult adoptee, sibling of an adoptee, or adoptive parent of a minor adoptee is outlined in the Adoption Act Regulations, Subsection C of 8.26.3.41 NMAC.

[8.8.2.15 NMAC - Rp, 8.8.2.18 NMAC, 03/31/10]

8.8.2.16 VENDOR AND PROVIDER PAYMENTS:

A. PSD shall collect social security or tax identification numbers for all vendors and providers.

B. PSD seeks recovery of all overpayments made.

C. Any demands for payments shall be submitted within forty-five (45) days of the service delivery or the date the charges were incurred or else payment is denied.

[8.8.2.16 NMAC - N, 03/31/10]

8.8.2.17 CRITICAL INCIDENT REVIEW:

A. PSD may conduct an internal review of any critical incident which may include, but is not limited to:

(1) a serious injury or death of a child in PSD custody or with a PSD history;

(2) high profile cases with PSD history or involvement;

(3) abuse or neglect allegations involving a foster or adoptive parent; and

(4) allegations involving PSD

employees, stipend students, or volunteers.

B. Critical incident reviews are confidential, as described herein at Subsections A and B of 8.8.2.15 NMAC, and are not for publication or release.

C. The intent of the critical incident review shall be to evaluate PSD's policies, procedures and practices and the internal decision-making process and to make improvements to protect other clients. [8.8.2.17 NMAC - Rp, 8.8.2.24 NMAC, 03/31/10]

8.8.2.18 QUALITY ASSURANCE:

A. PSD's quality assurance unit shall provide regularly scheduled case reviews of a sample of cases in PSD county offices to evaluate the provision of services in the areas of safety, permanency and well-being.

(1) The purpose of the quality assurance unit shall be to provide reliable and valid performance and outcome data that will be used to improve safety, permanency and well-being outcomes for children and families.

(2) The quality assurance unit shall use the federally approved child and family services (CFSR) instrument.

(3) The quality assurance unit shall review in-home and foster care cases.

(4) The quality assurance unit shall notify the county office manager and deputy director immediately about specific cases that have safety issues identified during the county office quality assurance review.

B. The results of the county-based quality assurance review shall be provided in writing to PSD management. The overall results of the county based quality assurance review may be made public upon request. However, information about the specific cases that were the basis of the findings is confidential as described herein at Subsections A and B of 8.8.2.15 NMAC.

C. The PSD management at the county office develops and implements a plan to improve outcomes based upon the results of the report.

[8.8.2.18 NMAC - Rp, 8.8.2.28 NMAC, 03/31/10]

8.8.2.19 ADOLESCENT AND ADOPTION RESOURCE TEAM (AART):

A. The AART team shall provide an internal real time quality assurance review of specific cases of children in the custody of PSD. The purpose of the AART shall be to provide an independent review of the permanency planning efforts for specific case types for the purpose of promoting good practice and ensuring timely achievement of permanency.

(1) The AART shall review the

designated cases with the assigned PS staff.

(2) The AART shall provide written reports that are confidential, as described herein at Subsections A and B of 8.8.2.15 NMAC, which include the steps and responsible parties that need to occur, and a finding as to whether or not there has been achievement of activities or goals.

B. PSD shall determine the specific case types to be reviewed based upon statewide performance on achievement of safety, permanency and well-being outcomes for children served by the agency. [8.8.2.19 NMAC - N, 03/31/10]

8.8.2.20 FAMILY CENTERED MEETINGS: The family-centered meeting (FCM) is a facilitated meeting where PSD workers and supervisors meet with parents, caregivers and others for the purpose of case planning and decision making. Case planning and decisions shall address safety, permanency and well-being of the child. [8.8.2.20 NMAC - N, 03/31/10]

8.8.2.21 QUALIFICATIONS AND TRAINING OF STAFF: Protective services division staff shall meet minimum qualifications as determined by their positions and job functions, and participate in formal pre-service and annual training as required by CYFD.

A. All PSD staff shall be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact, during the investigation and throughout the provision of services.

B. Protective services supervisors and county office managers shall receive training in supervision within six (6) months of commencing supervision or employment as a supervisor or county office manager.

C. All PSD field staff child protective services social and community services coordinators shall receive formal pre-service training as soon as possible after employment. Staff shall not be assigned primary case assignment until they have completed all pre-service training requirements, including on the job training.

D. All PSD field staff, supervisors, and county office managers shall participate in annual training. [8.8.2.21 NMAC - Rp, 8.8.2.26 NMAC, 03/31/10]

8.8.2.22 EMPLOYEE AND STUDENT BACKGROUND CHECKS: PSD requires that employees, as well as volunteers and students working in PSD offices, submit to criminal records checks (CRC) and abuse and neglect background checks prior to beginning employment or other assignment.

A. Level 1: Level 1

background checks shall involve a state CRC only. This level shall be required for administrative staff and management where duties do not include direct client contact or providing direct client service.

B. Level 2: Level 2 background checks shall involve a state CRC and a FACTS child abuse or neglect check. This level shall be required for volunteers and students (excluding stipend students in practicum placements, for whom Level 3 checks shall be required) who provide services to clients and are supervised by a PSD employee.

C. Level 3: Level 3 background checks shall involve state and FBI CRCs and a FACTS child abuse or neglect check. This level shall be required for employees who will have unsupervised direct contact with clients as well as for stipend students in practicum placements, see herein at Subsection T of 8.8.2.7 NMAC.

D. Disqualifiers: If a CRC or FACTS check reveals a criminal record or a substantiated abuse or neglect referral, the application shall be reviewed by CYFD human resources division to determine whether or not that record or referral disqualifies the applicant from employment, service as a volunteer, or student placement. [8.8.2.22 NMAC - N, 03/31/10]

8.8.2.23 EMPLOYEE SAFETY:

A. PSD requires pre-service training and encourages practice which helps protect the safety of its employees.

B. Workers shall report to management any situations or circumstances that they believe are unsafe. PSD management shall assist the worker in structuring the situation to enhance the safety for the worker.

[8.8.2.23 NMAC - Rp, 8.8.2.25 NMAC, 03/31/10]

8.8.2.24 CONFLICT OF INTEREST: PSD employees shall not have primary responsibility for cases in which the employee has a close personal relationship with the client or a principal in the case or in which the client is a relative. In the event of the above, the employee will immediately report the relationship to the supervisor and another employee will be assigned to the case.

[8.8.2.24 NMAC - Rp, 8.8.2.20 NMAC, 03/31/10]

8.8.2.25 STATE AND FEDERAL REQUIREMENTS:

A. Audits: PSD shall participate in required state and federal audits including but not limited to the federal Title IV-E foster care eligibility review, the federal child and family services review, and state audits.

B. Federal reports: PSD shall complete federal reporting requirements, including but not limited to, include the child and family services plan, the annual progress and services report, Title XX of the social security block grant, the national youth in transition database, AFCARS, and NCANDS.

[8.8.2.25 NMAC - N, 03/31/10]

8.8.2.26 FOSTER CARE GOALS: No more than 22% of the total number of children in foster care will have been in foster care for over twenty-four (24) months at any given point during the fiscal year.

[8.8.2.26 NMAC - N, 03/31/10]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 10 C H I L D PROTECTIVE SERVICES PART 2 P R O T E C T I V E SERVICES INTAKE

8.10.2.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD), Protective Services Division (PSD).

[8.10.2.1 NMAC - Rp, 8.10.2.1 NMAC, 03/31/10]

8.10.2.2 SCOPE: Protective services employees and the general public. [8.10.2.2 NMAC - Rp, 8.10.2.2 NMAC, 03/31/10]

8.10.2.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, 9-2A-7 D, NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (2009 Cum. Supp.) [8.10.2.3 NMAC - Rp, 8.10.2.3 NMAC, 03/31/10]

8.10.2.4 DURATION: Permanent. [8.10.2.4 NMAC - Rp, 8.10.2.4 NMAC, 03/31/10]

8.10.2.5 EFFECTIVE DATE: March 31, 2010, unless a later date is cited at the end of a section. [8.10.2.5 NMAC - Rp, 8.10.2.5 NMAC, 03/31/10]

8.10.2.6 OBJECTIVE: To establish provisions for accepting reports of alleged child abuse or neglect. [8.10.2.6 NMAC - Rp, 8.10.2.6 NMAC, 03/31/10]

8.10.2.7 DEFINITIONS:

A. "Abuse and neglect check" is the review of the protective services division management information system to determine if there has been any previous involvement with protective services.

B. "Children's Code" refers to the New Mexico Children's Code, Section 32A-1-1, et. seq., NMSA 1978.

C. "Collateral contact" refers to a person who may possess pertinent information concerning the individuals involved in a PSD investigation or who may be able to provide information to the PSD worker concerning the alleged abuse or neglect that would be helpful in assessing safety threats and protective capacities.

D. "CYFD" is the New Mexico children, youth and families department.

E. "Enhanced intake" is SCI's collection of additional information from collateral contacts in those circumstances where the initial reporter does not give sufficient information to make a decision on how to proceed with respect to the report.

F. "Indian child" refers to an unmarried person who is:

(1) under the age of eighteen (18) years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe.

G. "Initiation" is a face-to-face contact by the assigned protective services worker with the alleged victim.

H. "Intake" refers to the process by which SCI receives and screens reports of alleged child abuse or neglect.

I. "Placement" is an out of home residential arrangement for the care of children in PSD custody, which may include, but is not limited to family foster care, relative foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

J. "Present danger" means immediate, significant and observable severe harm or threat of severe harm that is presently occurring to a child and requires an immediate protective services response.

K. "Prioritization" is the assignment of a time frame for PSD to initiate an investigation based upon the reported safety threats to the child, the age of the child and the protective capacities identified in the report (See herein at 8.10.2.13 NMAC).

L. "Protective capacities" are those assets possessed by the caregiver that help reduce, control or prevent present or impending danger of serious harm to a child.

M. "Protective services division (PSD)" refers to the protective services division of the children, youth and families department, and is the state's designated child welfare agency.

N. "Provider" refers to any person or agency contracted by CYFD to provide placement or child care services.

O. "PSD custody" means custody of children as a result of an action filed pursuant to the Children's Code, Sections 32A-4-1 et seq. and 32A-3B-1 et seq NMSA 1978.

P. "Report" is a verbal or written presentation of information concerning alleged child abuse or neglect that is received by SCI.

Q. "Reporter" refers to any individual who has contacted PSD to make a report of alleged child abuse or neglect.

R. "Safety threats" are threats of serious harm to a child that may create a present or impending danger.

S. "Screened in report" is a report that has met PSD's criteria for acceptance for investigation.

T. "Screened out report" is a report that has not met PSD's criteria for acceptance for investigation.

U. "Statewide central intake (SCI)" the PSD unit with responsibility that includes, but is not limited to receiving and screening reports of alleged child abuse or neglect and assigning accepted reports to the appropriate county office for investigation.

[8.10.2.7 NMAC - Rp, 8.10.2.7 NMAC, 03/31/10]

8.10.2.8 PURPOSE OF CHILD PROTECTIVE SERVICES INTAKE:

The purpose of child protective services intake is to:

A. receive reports of alleged child abuse or neglect;

B. collect sufficient information to determine if the situation reported may constitute abuse or neglect as defined by the Children's Code, Sections 32A-4-2(B) and 32A-4 (E) NMSA 1978; and

C. to determine if the alleged perpetrator is a parent or caregiver in order to determine whether an investigation by PSD and a referral to another agency is warranted.

[8.10.2.8 NMAC - Rp, 8.10.2.8 NMAC, 03/31/10]

8.10.2.9 ELIGIBILITY:

A. Any child, birth up to age eighteen (18), shall be eligible for protective services intake without regard to income.

B. All individuals are required by the Children's Code, Section 32A-4-3(A) NMSA 1978 to report suspected

child abuse or neglect to SCI or law enforcement if he or she knows, or has a reasonable suspicion that a child has been abused or neglected.

[8.10.2.9 NMAC - Rp, 8.10.2.9 NMAC, 03/31/10]

8.10.2.10 PROVISION OF INTAKE SERVICES:

A. PSD shall receive reports of suspected child abuse or neglect twenty-four (24) hours a day, seven (7) days a week.

B. Intake services shall be conducted by individuals classified as a social and community services coordinator or caseworker, or higher.

C. PSD shall accept reports from individuals wishing to remain anonymous.

[8.10.2.10 NMAC - Rp, 8.10.2.10 NMAC, 03/31/10]

8.10.2.11 PROTECTION OF THE IDENTITY OF REPORT SOURCES:

PSD shall protect the identity of reporting sources and shall not disclose the reporter's identity, absent the consent of the reporter or a court order.

[8.10.2.11 NMAC - Rp, 8.10.2.11 NMAC, 03/31/10]

8.10.2.12 INTAKE DECISION:

A. PSD shall make intake decisions on all reports received.

B. PSD shall use information received from the reporting source, information from collateral contacts as available, and results of the abuse and neglect check to assist in making the intake decision.

C. PSD shall conduct enhanced intake to collect additional information to make an informed intake decision in appropriate circumstances or as appropriate.

D. PSD shall inform the reporting source of the intake decision when the source has provided information that allows PSD to contact him or her for additional contact.

[8.10.2.12 NMAC - Rp, 8.10.2.12 NMAC, 03/31/10]

8.10.2.13 PRIORITIZATION:

PSD SCI shall prioritize accepted reports as follows:

A. Emergency report: The highest priority report accepted by SCI for which the assigned PSD worker must initiate the investigation within three (3) hours of receipt of the report.

B. Priority one report: The second highest priority report accepted by SCI for which the assigned PSD worker must initiate the investigation within twenty-four (24) hours from receipt of the report.

C. Priority two report: The third highest priority report accepted by SCI for which the assigned PSD worker must initiate the investigation within five (5) calendar days from receipt of the report. [8.10.2.13 NMAC - Rp, 8.10.2.13 NMAC, 03/31/10]

8.10.2.14 PSD REPORTING REQUIREMENTS:

A. When it is the professional opinion of PSD staff that a reasonable suspicion of child abuse or neglect exists, PSD shall make a report is made to the appropriate law enforcement agency in writing within forty-eight (48) hours of receiving the report.

B. PSD shall refer screened out reports to other agencies as resources exist or as required by law.

C. When the alleged perpetrator of abuse or neglect is not a caregiver or household member, e.g. a coach, schoolteacher, or neighbor, PSD shall receive the information from the reporting source and shall inform the reporter that it will refer the allegation within forty-eight (48) hours to law enforcement for investigation.

D. When the report received involves an Indian child on the reservation or pueblo, PSD shall immediately transmit the information to tribal law enforcement or tribal social services.

[8.10.2.14 NMAC - Rp, 8.10.2.14 NMAC, 03/31/10]

8.10.2.15 DOCUMENTATION REQUIREMENTS FOR INTAKE:

A. SCI shall make a record of all reports.

B. PSD shall maintain records of all reports as follows:

(1) Screened out reports shall be maintained for one (1) year after date of last activity concerning client, as required by Subsection D of 1.18.690.31 NMAC.

(2) Accepted reports shall be maintained as part of the investigation case record for eighteen (18) years after case closure, as required by Paragraph (2) of Subsection D of 1.18.690.30 NMAC.

[8.10.2.15 NMAC - Rp, 8.10.2.15 NMAC, 03/31/10]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 10 C H I L D PROTECTIVE SERVICES PART 3 P R O T E C T I V E SERVICES INVESTIGATION

8.10.3.1 ISSUING AGENCY: Children, youth and families department (CYFD), Protective services division (PSD) [8.10.3.1 NMAC - Rp, 8.10.3.1 NMAC, 03/31/10]

8.10.3.2 SCOPE: Protective services employees and the general public. [8.10.3.2 NMAC - Rp, 8.10.3.2 NMAC, 03/31/10]

8.10.3.3 S T A T U T O R Y AUTHORITY: Children, Youth and Families Department Act, Section 9-2A-7 D, NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (2009 Cum. Supp.) [8.10.3.3 NMAC - Rp, 8.10.3.3 NMAC, 03/31/10]

8.10.3.4 D U R A T I O N : Permanent. [8.10.3.4 NMAC - Rp, 8.10.3.4 NMAC, 03/31/10]

8.10.3.5 EFFECTIVE DATE: March 31, 2010, unless a later date is cited at the end of a section. [8.10.3.5 NMAC - Rp, 8.10.3.5 NMAC, 03/31/10]

8.10.3.6 OBJECTIVE: To establish guidelines for the investigation and disposition of cases of alleged abuse and neglect of children by their parent, guardian, caregiver, other household members, or foster care provider. [8.10.3.6 NMAC - Rp, 8.10.3.6 NMAC, 03/31/10]

8.10.3.7 DEFINITIONS:

A. "Abandonment" as defined in the Children's Code, Section 32A-4-2(A) NMSA 1978, includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen (14) days; or

(2) left the child with other, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three (3) months if the child was under six (6) years of age at the commencement of the three (3) month

period; or

(b) six (6) months if the child was over six (6) years of age at the commencement of the six (6) month period.

B. "Abused child" as defined in the Children's Code, Section 32A-4-2(B) NMSA 1978, means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child.

C. "Administrative review" is an informal process which may include an informal conference or a record review, and does not create any substantive rights for the family.

D. "Accepted report" is an verbal or written presentation of information concerning the alleged abuse or neglect made to the protective services division (PSD) of child abuse or neglect that falls within PSD's legal authority to investigate.

E. "Caregiver" is a person responsible for and is caring for the child, who the legal guardian has placed the child in the care of, or who has assumed responsibility for the care of the child in the absence of the legal guardian.

F. "Children's Code" refers to the New Mexico Children's Code, Section 32A-1-1, et. seq., NMSA 1978.

G. "Collateral contact" refers to a person who may possess pertinent information concerning the individuals involved in a PSD investigation or who may be able to provide information to the PSD worker concerning the alleged abuse or neglect that would be helpful in assessing safety threats and protective capacities.

H. "Conditionally safe" means that one or more safety threats have been identified that places the child in immediate or impending danger of serious harm, however one or more protective capacities has been identified to offset, mitigate or control the threat of immediate or impending danger of serious harm.

I. "CYFD" refers to the New Mexico children, youth and families department.

J. "E x i g e n t

circumstances" means when there is credible information that a child is in danger of severe harm and requires immediate protective services.

K. "Emotional maltreatment" is an observable behavior, activity, or words to intimidate, threaten, deride or degrade the child that causes substantial impairment of the child's mental or psychological ability to function.

L. "Home school" is the operation of a home study program by a parent as filed with the public education department.

M. "Impending danger" means a state of danger in which family behaviors, attitudes, motives, emotions or situations pose a threat which may not be currently active, but can be anticipated to have severe effects on a child at any time.

N. "Indian child" refers to an unmarried person who is under the age of eighteen (18) years old and a member of an Indian tribe, or is eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

O. "Initiation" of an investigation is the face-to-face contact by a PSD worker with the alleged victim, or documented diligent efforts to establish face-to-face contact with the victim.

P. "Investigative decision" is a determination of whether each allegation in the report is substantiated or unsubstantiated, as defined herein at 8.10.3.18 NMAC.

Q. "Investigation disposition" is the determination of the level of involvement, if any, of PSD with the family based upon an assessment of safety threats and protective capacities, and considering the ongoing risk to the child and the needs and strengths of the family.

R. "Neglected child" as defined in the Children's Code, Section 32A-4-2(E) NMSA 1978, means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of faults or habits of the child's parent, guardian or custodian, or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, the child's parent, guardian or custodian knew or should have know of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care

of adoption in violation of the law; provided that nothing in the Children's Code (32A-1-1 NMSA 1978) shall be construed to imply that a child who is being provided with treatment by spiritual needs alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner there of is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code.

S. "Parental notice or notification" is an in-person or telephone notice to the parent or legal guardian that his or her child will be or has been interviewed as part of an investigation.

T. "Permission" is the consent for the child to participate in an investigation.

U. "Physical abuse" as defined in the Children's Code, Section 32A-4-2(F) NMSA 1978 includes, but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence.

V. "Placement" is an out of home residential arrangement for the care of children in the custody of PSD, including: family foster care, relative foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

W. "Present danger" means immediate, significant and observable severe harm or threat of severe harm that is presently occurring to a child and requires an immediate protective services response.

X. "Protective capacities" are those assets possessed by the caregiver that help reduce, control or prevent present or impending danger of serious harm to a child.

Y. "Protective services division (PSD)" refers to the protective services division of the children, youth and families department, and is the state's designated child welfare agency.

Z. "Provider" refers to a person or agency providing services to a PSD client.

AA. "Private school" is a public education department authorized

school, including private childcare, other than a home school, that is not under the control, supervision or management of a local school board.

BB. "PSD custody" means custody of children as a result of an action filed pursuant to the Children's Code, 32A-4-1 et seq. NMSA 1978 or 32A-3B-1 et seq. NMSA 1978.

CC. "Public school" is a school that is under the control, supervision or management of a local school district or the state board of education, including charter schools.

DD. "Reasonable efforts" as used in this policy refers to the provision of services or other interventions to prevent the removal of the child from the home, or if removal is required, to return the child home as soon as possible.

EE. "Report" is a verbal or written presentation of information concerning alleged child abuse or neglect that is received by SCI.

FF. "Safe" as used in this policy means that there are no safety threats placing the child in a present or impending danger of serious harm.

GG. "Safe haven" refers to the Safe Haven for Infants Act whereby a person may leave an infant with the staff of a hospital without being subject to criminal prosecution for abandonment or abuse if the infant was born within 90 days of being left at the hospital, as determined within a reasonable degree of medical certainty, and if the infant is left in a condition that would not constitute abandonment or abuse pursuant to Section 24-22-1 NMSA 1978.

HH. "Safety decision" is based on the presence of safety threats and protective capacities that offset, mitigate or control those threats. A child may be assessed to be safe, conditionally safe or unsafe.

II. "Safety intervention" is a strategy or group of strategies implemented to control a safety threat; it is an intrusion into family life in the form of ongoing assessment and specific strategies designed to match the duration and level of the safety threat up to and including removal of the child from home.

JJ. "Safety threats" are threats of serious harm to a child that may create a present or impending danger.

KK. "Sexual abuse" as defined in the Children's Code, Section 32A-4-2(G) NMSA 1978, includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law.

LL. "Sexual exploitation" as defined in the Children's Code, Section 32A-4-2(H) NMSA 1978 includes, but is not limited to:

(1) allowing, permitting or

encouraging a child to engage in prostitution;

(2) allowing, permitting or encouraging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law.

MM. "Unsafe" means that one or more safety threats have been identified that place the child in present or impending danger of serious harm and there are not sufficient protective capacities to offset, mitigate or control the threat of present or impending danger of serious harm.

[8.10.3.7 NMAC - Rp, 8.10.3.7 NMAC, 03/31/10]

8.10.3.8 PURPOSE OF CHILD PROTECTIVE SERVICES INVESTIGATION:

The purpose of protective services investigation is to assess safety of children who are the subjects of reports of alleged abuse or neglect. The purpose of the investigation is to collect and assess information to determine whether the incident of child abuse or neglect occurred, whether any child in the home remains at risk for continuing abuse or neglect, and to assess the need for additional protective services. Investigations shall be conducted for children in the custody of their biological parents, adoptive parents, other relatives or guardians, or who are in PSD custody.

[8.10.3.8 NMAC - Rp, 8.10.3.8 NMAC, 03/31/10]

8.10.3.9 ASSIGNMENT AND INITIATION OF INVESTIGATION:

A. Every accepted report concerning alleged child abuse or neglect, shall be assigned for investigation according to the investigation priority as determined by statewide central intake (SCI).

B. Investigation priority: The PSD worker shall initiate the investigation within the time frames established by PSD as follows:

(1) Emergency reports shall be initiated within three (3) hours of SCI's decision to accept the report.

(2) Priority one reports shall be initiated within twenty-four (24) hours of receipt of SCI's decision to accept the report.

(3) Priority two reports shall be initiated within five (5) calendar days of SCI's decision to accept the report.

[8.10.3.9 NMAC - Rp, 8.10.3.10 NMAC, 03/31/10]

8.10.3.10 INVESTIGATION REQUIREMENTS - GENERAL:

A. The safety of the child is the overriding concern throughout the casework relationship with the family. If the safety of the child is ever in conflict with

the preservation of a family unit, the child's need for protection always takes precedence. PSD shall request immediate assistance from law enforcement if necessary to assess and secure the safety of the child.

B. The PSD worker shall conduct the investigation in a manner that protects the privacy of the child and family.

C. The PSD worker shall gather the information required to identify the safety threats and protective capacities and ongoing risks of harm to the child.

D. The PSD worker shall interview collateral contacts during the investigation.

E. The PSD worker shall visit the home during an investigation. This requirement may be waived in specific circumstances that include but are not limited to:

(1) the parent or guardian refuses the worker entrance;

(2) the home has been determined to be unsafe by law enforcement and/or public health; or

(3) the family is homeless.

F. The PSD worker shall complete the safety assessment, risk assessment and family strengths and needs assessments tools in all investigations. These are FACTS tools used by the PSD worker in determining the investigation decision and disposition.

G. The PSD worker shall complete the investigation and documents all investigation requirements, as specified in this section and herein at 8.10.3.12 NMAC and 8.10.3.13 NMAC, within thirty (30) days of SCI accepting the report (see also herein at 8.10.3.17 NMAC and 8.10.3.18 NMAC).

[8.10.3.10 NMAC - N, 03/31/10]

8.10.3.11 INVESTIGATION REQUIREMENTS - CHILD VICTIM AND OTHER CHILDREN:

A. The PSD worker shall interview and observe the alleged child victim and all other children in the household during the investigation. The following applies based on the site at which the interview will take place.

(1) Interviews at home: Children contacted at home are interviewed only with the permission of the parent or caretaker.

(2) Interviews at public schools:

(a) public schools are required by the Children's Code, Section 32A-4-5 (C) NMSA 1978, to permit the PSD worker to interview children involved in a PSD investigation; and

(b) parental permission is not required to interview a child at public school.

(3) Interviews at private schools or in childcare homes and facilities:

(a) a private school or childcare home or facility may deny permission for

the PSD worker to interview the child on the facility grounds, and

(b) if permission is denied and exigent circumstances are believed to exist, PSD shall determine whether to contact law enforcement or obtain a court order.

B. The PSD worker shall conduct all interactions with alleged child victims and child witnesses in a child sensitive manner that takes into consideration the special needs of the child, the child's ability, age, language and intellectual maturity.

C. The PSD worker shall inform all children that their participation in the interview is voluntary. Children fourteen (14) years of age and older must agree to participate in the interview even when the PSD worker has obtained parental permission.

D. The PSD worker shall arrange for any medical, mental health, or other evaluations or examinations as required during the investigation.

[8.10.3.11 NMAC - N, 03/31/10]

8.10.3.12 INVESTIGATION REQUIREMENTS - PARENTS AND CAREGIVERS:

A. The PSD worker shall notify the parent of the interview with the child in advance of the interview unless the worker has determined that notification could adversely affect the safety of the child about whom the report has been made or compromise the investigation.

B. If the PSD worker shall determine that notification could adversely affect the safety of the child or compromise the investigation, the worker may interview a child without prior notification of the parents or guardians. In this situation, the PSD worker shall notify the parents or guardians of the interview within twenty-four (24) hours.

C. The PSD worker shall identify all legal guardians and caregivers of the child.

D. The PSD worker shall interview the parents, guardians, or the caregiver, during the investigation.

E. At the time of initial contact with the parents, guardian or alleged perpetrator the PSD worker shall inform him or her of the reported allegations made in a manner consistent with laws protecting the rights of the reporter.

F. At the beginning of the investigation, or prior to beginning an interview with the parent or guardian, the PSD worker shall inform the parents or guardians of the following:

(1) that prior to any legal proceeding, any PSD interaction with the parents or guardians, or the caregiver, is voluntary;

(2) that PSD has received a report alleging child abuse or neglect and

what the allegations are that has led to the investigation;

(3) that only law enforcement can remove a child who is not in PSD custody, if necessary to protect the child's health and safety, unless the district court issues an ex parte order allowing PSD to remove the child;

(4) that the investigation findings, decision, and disposition are confidential in accordance with the Children's Code, Section 32A-4-33 NMSA 1978;

(5) that information concerning the report and investigation has been entered into PSD's data management system;

(6) that other people may be interviewed in order to complete the investigation; and

(7) children age fourteen (14) and older may consent to an interview away from the home even when the parent does not consent.

[8.10.3.12 NMAC - N, 03/31/10]

8.10.3.13 ALLEGATIONS OF ABUSE OR NEGLECT IN FACILITIES:

A. Law enforcement shall be responsible for conducting investigations of child abuse or neglect in schools, facilities, and child care homes or centers. Upon request from law enforcement, the PSD worker shall assist in the investigation.

B. When PSD is notified of any allegations in a school, facility or child care home or center in which a child in PSD custody is placed or receiving services:

(1) if the alleged victim is a child in PSD custody, PSD shall conduct an assessment of that child's safety and well-being; or

(2) if the alleged victim is not a child in PSD custody, PSD may, at its discretion, conduct an assessment of the safety and well-being of any children in PSD custody placed or receiving services there.

[8.10.3.13 NMAC - Rp, 8.10.3.13 NMAC, 03/31/10]

8.10.3.14 ALLEGATIONS OF ABUSE OR NEGLECT IN FOSTER HOMES, TREATMENT FOSTER HOMES, AND PRE-ADOPTIVE HOMES:

A. PSD shall investigate abuse or neglect allegations involving a PSD licensed foster home, treatment foster home, or pre-adoptive home.

B. PSD shall notify law enforcement and coordinate the investigation with law enforcement when law enforcement is involved.

[8.10.3.14 NMAC - Rp, 8.10.3.14 NMAC, 03/31/10]

8.10.3.15 INVESTIGATIONS INVOLVING INDIAN CHILDREN:

A. PSD shall investigate

allegations of child abuse or neglect involving Indian children who reside off the reservation or pueblo.

B. PSD shall assist in the investigation of allegations of child abuse or neglect involving children who reside on the reservation or pueblo, if requested by the Indian tribal government.

C. PSD shall make efforts to determine if the child who is subject of an investigation is an Indian child.

D. PSD shall notify the tribe of any investigations involving Indian children as required by the Indian Child Welfare Act.

[8.10.3.15 NMAC - Rp, 8.10.3.15 NMAC, 03/31/10]

8.10.3.16 SEEKING OR ACCEPTING CUSTODY OF CHILDREN, INCLUDING INDIAN CHILDREN:

A. PSD shall make reasonable efforts to maintain the family unit and prevent the removal of a child from his or her home, as long as the child's safety is assured.

B. If temporary out-of-home placement is necessary to ensure the immediate safety of the child, PSD shall make reasonable efforts to effect the safe reunification of the child and family.

C. PSD shall seek custody of Indian children who are domiciled or residing off-reservation when continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical harm to the child.

D. An Indian child who is domiciled on the reservation but temporarily located off the reservation may be removed by law enforcement from his parent or Indian custodian in order to prevent imminent physical harm to the child. PSD shall notify the tribe as soon as possible and facilitates a transfer of the case to the tribe.

E. PSD shall notify parents or guardians that their child is in custody within twenty four (24) hours of the child being taken into custody.

F. PSD shall make every effort to identify, locate and notify fit and willing relatives for consideration of placement of a child in custody who requires out of home placement.

[8.10.3.16 NMAC - Rp, 8.10.3.16 NMAC, 03/31/10]

8.10.3.17 COMPLETION OF AN INVESTIGATION AND INVESTIGATION DECISION:

A. The PSD worker shall complete the investigation and decide whether the report's allegations of abuse or neglect are substantiated or unsubstantiated within thirty (30) days of SCI accepting the report for investigation, unless an extension

is approved by the supervisor. Extensions are not to exceed an additional thirty (30) days after the original thirty (30) days have passed.

(1) **Substantiated report:** an allegation of child abuse or neglect in which a caregiver or provider has been identified as the perpetrator or as failing to protect the child and credible evidence exists to support the investigation worker's conclusion that the child has been abused or neglected, as defined in the Children's Code. Credible evidence upon which to base a finding of substantiation may include, but is not limited to:

- (a) a caregiver's admission;
- (b) physical facts or evidence;
- (c) collateral or witness statements

and observations;

- (d) a child's disclosure; and
- (e) the investigation worker's observation.

(2) **Unsubstantiated report:** an allegation of child abuse or neglect in which the information collected during the investigation does not support a finding that the child was abused or neglected, as defined in the Children's Code.

B. The PSD worker shall document the investigation decision and the supervisory review and approval of the decision in FACTS.

[8.10.3.17 NMAC - Rp, 8.10.3.17 NMAC, 03/31/10]

8.10.3.18 INVESTIGATION DISPOSITION:

A. The PSD worker shall make an investigation disposition within thirty (30) days of SCI accepting the report in every investigation PSD conducts, unless an extension is approved by the supervisor. Extensions are not to exceed an additional thirty (30) days after the original thirty (30) days have passed.

B. The PSD worker shall determine the disposition of the investigation based upon the safety decision (safe, conditionally safe, or unsafe) and the service delivery matrix that considers the assessment of risk and the needs and strengths of the family.

C. Disposition options may include, but are not limited to closing the case, referring the family to community providers, providing in-home services (IHS), or providing permanency planning services.

D. PSD shall document the safety decision and the investigation disposition in FACTS.

[8.10.3.18 NMAC - Rp, 8.10.3.18 NMAC, 03/31/10]

8.10.3.19 DOCUMENTATION:

A. PSD shall document investigation assignments and requirements, as described herein at 8.10.3.9, 8.10.3.10

and 8.10.3.11 NMAC, and shall document the investigation decisions and dispositions in FACTS as described herein at 8.10.3.17 and 8.10.3.18 NMAC.

B. PSD shall document reasonable efforts made to avoid removal of the child from the home and efforts to reunify the child if removal was required during the investigation. Documentation shall be included in the case record and in the affidavit for custody.

C. All information obtained by PSD in an abuse and neglect investigation is confidential and is released only as allowed by law (See Protective Services Legal Policies, Subsection A of 8.10.7.10 NMAC).

[8.10.3.19 NMAC - Rp, 8.10.3.19 NMAC, 03/31/10]

8.10.3.20 NOTIFICATION OF THE INVESTIGATIVE DECISION AND RIGHT TO ADMINISTRATIVE REVIEW:

A. The PSD worker shall notify the parents, guardians, or providers and, if appropriate, law enforcement and regulatory agencies of the investigation decision.

B. The PSD worker shall notify the parent, guardian or provider of the substantiated investigation, which is not the subject of a pending children's court case, may be reviewed through PSD's administrative review process.

[8.10.3.20 NMAC - Rp, 8.10.3.20 NMAC, 03/31/10]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 10 C H I L D PROTECTIVE SERVICES PART 7 P R O T E C T I V E SERVICES LEGAL

8.10.7.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD), Protective Services Division (PSD).

[8.10.7.1 NMAC - Rp, 8.10.7.1 NMAC, 3/31/10]

8.10.7.2 SCOPE: Protective services employees and the general public.
[8.10.7.2 NMAC - Rp, 8.10.7.2 NMAC, 3/31/10]

8.10.7.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, Section 9-2A-7 D, NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Cum. Supp. 2009); and New Mexico Children's Court

Rules SCRA 10-1 et seq.

[8.10.7.3 NMAC - Rp, 8.10.7.3 NMAC, 3/31/10]

8.10.7.4 DURATION: Permanent.

[8.10.7.4 NMAC - Rp, 8.10.7.4 NMAC, 3/31/10]

8.10.7.5 EFFECTIVE DATE: March 31, 2010, unless a later date is cited at the end of a section.

[8.10.7.5 NMAC - Rp, 8.10.7.5 NMAC, 3/31/10]

8.10.7.6 OBJECTIVE: To establish parameters for the provision of legal services for children at significant risk of abuse or neglect and children in the custody of CYFD.

[8.10.7.6 NMAC - Rp, 8.10.7.6 NMAC, 3/31/10]

8.10.7.7 DEFINITIONS:

A. "Adjudication hearing" is the hearing that occurs within sixty (60) days of service on the respondents at which the court determines whether the child is abused or neglected.

B. "Adjustment of status" is the application or procedure to obtain lawful permanent residency.

C. "Affidavit" means a sworn statement of facts and accompanies the petition for an ex-parte order. It is signed by any person who either has personal knowledge of the facts or has been informed of them and believes them to be true.

D. "Best interest of the child" is the standard that reflects the protection of the child from abuse and neglect. In motions to terminate parental rights and for permanent guardianship cases, the term encompasses stability and permanency in placement.

E. "Case planning issues" include placement decisions, permanency planning goals and treatment recommendations.

F. "Children's Code" refers to the New Mexico Children's Code, Section 32A-1-1, et. seq., NMSA 1978.

G. "Children's court attorneys" are the attorneys who have been given the authority and the responsibility to represent protective services division (PSD) in child abuse and neglect and family in need of services proceedings.

H. "Child's attorney" is a trained attorney appointed by the court to represent the child who is fourteen (14) years of age or older; also referred to as "youth attorney."

I. "Citizen and immigration services (CIS)" is the bureau within the department of homeland security responsible for processing immigrant

related services and benefits, including special immigrant juvenile status (SIJS) and adjustment of status petitions.

J. "Constitutionally protected liberty interest," in terms of the parent-child relationship, refers to the right of parents to the care, custody and nurture of their children; a parent's constitutionally protected liberty interest includes retaining custody of one's children and, thus, a state may not interfere with a parent's custodial rights absent due process protections.

K. "Custodian" refers to an adult with whom the child lives who is not a parent or guardian.

L. "Custody hearing" is the hearing at which the court determines if probable cause exists for the child to remain in PSD's custody pending adjudication.

M. "Date child enters foster care" means the earlier of sixty (60) days from the date of removal of the child or the date of the adjudication of child abuse or neglect.

N. "Disposition" means the court hearing which establishes custody and where the court may adopt a treatment plan for the child and family.

O. "Emergency custody" exists when a child is removed from the parent's home based upon a determination by law enforcement that the child is in need of protective custody or based upon an ex parte custody order.

P. "Ex parte custody order" is an order issued by the court pursuant to an ex parte affidavit that grants emergency custody to PSD.

Q. "Foreign national" or "alien" means a person who is not a United States citizen.

R. "Guardian ad litem" is trained attorney appointed by the court to represent and protect the best interests of the child in a neglect and abuse proceeding when the child is less than fourteen (14) years old.

S. "Immigration and customs enforcement (ICE)" refers to the bureau within the department of homeland security that carries out investigation and enforcement functions. ICE has no authority over SIJS.

T. "Indian child" refers to an unmarried person who is

(1) under the age of eighteen years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe.

U. "Infant" means a child less than one (1) year of age.

V. "Juvenile court," under federal immigration law, means a court with jurisdiction under state law to make

determinations over the care and custody of children. In New Mexico, the term used is children's court rather than juvenile court.

W. "Lawful permanent resident" refers to a foreign national or alien with permission to live and work indefinitely in the United States, but who cannot vote (also known as a "green card holder").

X. "Legal custody" means a legal status created by order of the children's court or other court of competent jurisdiction or by operation of the New Mexico Children's Code, Section 32A-4-1 et seq or 32A-3B-1 et seq, NMSA 1978, that vests in a person, department or agency the:

(1) right to determine where and with whom a child shall live;

(2) right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care;

(3) right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and

(4) right to consent to the child's enlistment in the armed forces of the United States.

Y. "Party" in a neglect and abuse proceeding is any individual named in the petition or subsequently granted that status in the case by the court.

Z. "Periodic review" is a court hearing where the court reviews the treatment plan (case plan) and may modify the plan or adopt a new plan.

AA. "Permanency hearing" is a court hearing where the court reviews the progress made in the case, determines the permanency plan for the child and creates orders to expedite the achievement of permanency for the child.

BB. "Permanency review hearing" is a court hearing held within three months of the permanency hearing when the court has adopted a permanency plan of reunification and a transition plan or a court hearing held within sixty (60) days of the permanency hearing when the court has adopted a permanency plan other than reunification and has determined that reasonable efforts have not been made to identify or locate relatives or reasonable efforts have not been made to conduct home studies on appropriate relatives interested in providing permanency for the child.

CC. "Petition" means the document filed with the court setting forth the allegations of abuse or neglect and relief sought.

DD. "Protective services division (PSD)" refers to the protective services division of the children, youth and families department, and is the state's

designated child welfare agency.

EE. "Protective supervision" is ordered by the court to allow PSD to visit the child in the home where the child resides, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child.

FF. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and treatment possibilities with respect to the medical conditions involved.

GG. "Relative" refers to grandparents, aunts and uncles, adult siblings, and any other relative that the parent identifies as a potential placement resource.

HH. "Respondent" refers to a parent, guardian or custodian of a child named in an abuse or neglect proceeding.

II. "Special immigrant juvenile status (SIJS)" refers to a status created by federal law that helps abused, neglected or abandoned foreign national child in the juvenile court system to become lawful permanent residents where reunification and return to the country of origin are not viable options.

JJ. "Stipulation" is an admission or a plea of no contest by the respondent to one or more of the allegations in the petition.

KK. "Trial home visit" means the period of time, not to exceed six (6) months, in which a child with a plan of reunification resides with the parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

LL. "Undocumented foreign national" or "undocumented alien" refers to a foreign national or alien without lawful immigration status in the United States. This includes persons who may have entered without legal permission or entered legally and overstayed his or her visa.

MM. "United States citizen" refers to a person born in the United States, Guam, Puerto Rico or the U.S. Virgin Islands, or a person, who "naturalizes," i.e., becomes a United States citizen upon an application after five (5) years of being a permanent resident. This also generally includes children born abroad to United States citizen parents.

NN. "Use immunity" means that the in-court testimony, statements made in the course of court ordered psychological evaluation or treatment program, records, documents or other physical objects produced by a respondent who has been granted use immunity status by the court shall not be used against that respondent in

a criminal prosecution.

OO. "Withholding medically indicated treatment" means the failure to respond to a child's life-threatening condition by providing treatment which, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions.

[8.10.7.7 NMAC - Rp, 8.10.7.7 NMAC, 3/31/10]

8.10.7.8 PURPOSE OF PROTECTIVE SERVICES LEGAL POLICIES: The purpose of child protective legal services is to represent PSD's position in court with regard to the permanency plans for children, protect children through legal intervention and facilitate permanency in relevant cases.

[8.10.7.8 NMAC - Rp, 8.10.7.8 NMAC, 3/31/10]

8.10.7.9 THE CHILDREN'S COURT ATTORNEY:

A. Role of the children's court attorney: The children's court attorney shall provide information, interpretation of law and general assistance to PSD in the provision of child protective services and presents PSD's recommendations in a court of law.

B. Attorney-client relationship: The primary decision-maker on the case shall be the PSD worker for the purpose of the attorney-client relationship.

C. Differences of opinion: When the children's court attorney, PSD worker and supervisor cannot agree on the most appropriate course of action, the issues shall be resolved between the managing children's court attorney and county office manager. The protective services director shall the final arbiter in a decision.

D. Attorney-client privileged communications: Written and verbal communications concerning PSD business between a children's court attorney and a PSD worker is privileged. Privileged communications may not be disclosed to a third party outside the department unless a specific decision with the appropriate approval has been made to waive such privilege.

E. No conversations concerning settlement or disposition shall occur in the absence the children's court attorney representing PSD in the case.

(1) Direct contact between PSD workers and respondent's counsel is limited to the exchange of routine information, such as, time for visitation and the name of psychologist to perform evaluation.

(2) PSD routinely informs the guardian ad litem or child's attorney about important decisions relating to the child.

[8.10.7.9 NMAC - Rp, 8.10.7.9 NMAC,

3/31/10]

8.10.7.10 G E N E R A L PROVISIONS:

A. Confidentiality and access to abuse and neglect records: Protective services records and information incident to, or obtained as a result of an abuse or neglect investigation or proceeding are confidential and can only be inspected pursuant to a valid court order, except by those entities specifically entitled to access under the New Mexico Children's Code.

(1) When allowing access to an authorized entity, all attorney-client privileged information and all identifying information on the reporting source shall be stricken.

(2) Protective services records or information shall not be released pursuant to a subpoena because subpoenas do not reflect a determination by a children's court judge that the requesting party has a legitimate interest in the case or the work of the court.

B. PSD uses the best interest of the child as the standard to make decisions regarding planning and managing child protective services cases. Protection and the best interest of the child are of paramount concern, followed by the treatment needs of the family.

C. Change of venue or transfer of legal cases: A motion to change venue shall not initiate absent approval of the sending and receiving county protective services offices. Venue shall not be changed on cases where a consent decree has been entered or adjudication has not occurred.

D. Child support: PSD shall make a report for the collection of child support to the child support enforcement division for all children in custody.

E. Home studies in domestic relations cases: There shall be no legal authority for courts to order PSD to conduct home studies in New Mexico domestic relations cases to which PSD is not a party.

(1) Children's court attorneys shall object to requests for orders to conduct home studies in New Mexico domestic relations cases.

(2) PSD shall respond to a request for a home study as an abuse or neglect report, and screens and investigates in accordance with protective services policy.

F. Immigration status: Whenever the court adjudicates that a child is abused or neglected, PSD shall determine the child's immigration status.

[8.10.7.10 NMAC - Rp, 8.10.7.12 NMAC, 3/31/10]

8.10.7.11 PROCEDURAL PRINCIPLES:

A. PSD shall comply with the provisions of the New Mexico Children's Code and the children's court rules.

B. Emergency custody given to PSD by law enforcement shall not be extended.

C. When protective supervision has been ordered, the child shall not be removed from his or her home absent emergency custody granted by law enforcement, or by an order of the court.

D. Legal custody includes the right to place a child. If PSD has legal custody, the court shall only order a specific placement when PSD has abused its discretion in the placement or proposed placement of a child.

E. Allegations of abuse or neglect shall be made for each individual named as a respondent in a petition. To perfect PSD's custody, both parents may be named as respondents. If there are no allegations as to one parent, then that parent may generally receive custody.

F. A father who does not have parental rights to the child, i.e. a constitutionally protected liberty interest, may be excluded from the petition.

G. A custodian may be named as a respondent.

H. If allegations of abuse or neglect are proven as to only one child, and PSD makes the decision that other siblings in the household are at risk and should be placed in PSD custody, then the children's court attorney utilizes New Mexico case law to seek custody of those at-risk children.

I. A hearing on custody pending an adjudicatory hearing shall be held within ten (10) working days of the filing of the petition. A judgment granting custody to PSD remains in force for an indeterminate period not to exceed two (2) years. If custody is still required to protect the child, then PSD shall request an extension of custody prior to the expiration.

J. An adjudicatory hearing shall be held in regard to the abuse or neglect of each parent. The time frame shall run separately based on the respective dates of service on each parent.

K. Parties shall not extend the time frame for "commencing" the adjudicatory hearing by agreement. Parties may seek an extension by filing a petition with the children's court judge or the supreme court, as specified in Children's Court Rules 10-343 (Adjudicatory hearing; time limits; continuances).

L. Prior to the adjudicatory hearing and permanency hearing, PSD shall meet with the other parties and shall attempt to settle issues attendant to the hearing and proposed treatment plan that serves the child's best interest.

M. Cases in which the child is removed from the home:

(1) In the first court order that sanctions the removal of a child from the home, PSD shall seek a judicial

determination that continuing in the home would be contrary to the child's welfare, or that placement would be in the best interest of the child.

(2) PSD shall seek to obtain, within sixty (60) days from the date the child is removed, a judicial determination that reasonable efforts were made, or were not required, to prevent removal.

(3) If feasible, both judicial determinations shall be sought simultaneously.

N. In those cases where a child remains in voluntary foster care longer than one hundred eighty (180) days, PSD shall obtain a judicial determination prior to the one hundred eightieth (180th) day that the child's placement in voluntary foster care is in the best interest of the child.

O. At the first judicial review, PSD shall report the child's immigration status to the court.

[8.10.7.11 NMAC - Rp, 8.10.7.13 NMAC, 3/31/10]

8.10.7.12 L I T I G A T I O N CONSIDERATIONS:

A. PSD shall make reasonable efforts to prevent removal of the child and, when removal is necessary, PSD shall make reasonable efforts to reunify the child, and to finalize the child's current permanency plan.

B. Reasonable efforts to prevent a child's removal from home, or to reunify the child and family shall not be required if PSD obtains a judicial determination that such efforts are not required because:

(1) a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as set forth in the New Mexico Children's Code; or

(2) the parent or custodian has been convicted, by a court of competent jurisdiction, of murder or voluntary manslaughter of another child of the parent, or of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter, or convicted of a felony assault that results in serious bodily injury to the child or another child of the parent.

C. The child or youth participates in court proceedings in his or her case unless it is determined not to be in the child's or youth's best interest. At the permanency hearing, the child is consulted, in an age-appropriate manner, about the permanency plan developed for the child.

D. PSD shall pursue obtaining use immunity when PSD's reunification efforts may conflict with a criminal prosecution.

E. The PSD worker is PSD's primary witness on case planning issues.

F. PSD shall give the children's court attorney advance notice of all witnesses, expert or otherwise, to be called to allow sufficient time to secure subpoenas and service by the sheriff's department or contracted process servers. PSD shall reimburse for expert testimony, time and travel according to established guidelines. Payments which exceed the established guidelines shall be approved by the chief children's court attorney.

G. In a case where a parent has a recognizable mental or physical disability, PSD shows how services provided were designed to address the disability within the context of the parenting plan.

H. PSD shall seek to obtain judicial determinations that are made on a case-by-case basis, and in which the court states the specific reasons for its determination.

I. When a court rules against PSD on a significant issue, the children's court attorney shall initiate a discussion with the child's worker and the appellate attorney to determine whether there are grounds to appeal and the ramifications of the appeal on the department.

[8.10.7.12 NMAC - Rp, 8.10.7.18 NMAC, 3/31/10]

8.10.7.13 STIPULATION:

Settlement of a child abuse or neglect case at the adjudicatory stage involves a stipulation (admission or plea of no contest) as to the case-specific underlying factual basis of the allegation. In most cases, a stipulation to a lesser charge when there is an allegation of sexual abuse or severe physical abuse is unacceptable based on treatment issues and protection of other potential victims. The managing children's court attorney shall approve any exceptions.

[8.10.7.13 NMAC - Rp, 8.10.7.14 NMAC, 3/31/10]

8.10.7.14 APPOINTMENT OF GUARDIAN AD LITEM (GAL) OR CHILD'S ATTORNEY:

PSD shall request that a GAL be appointed to represent and protect the best interests of the child in a abuse or neglect proceeding when the child is less than fourteen (14) years old. PSD shall request that an attorney be appointed to represent the child fourteen (14) years of age or older.

[8.10.7.14 NMAC - Rp, 8.10.7.17 NMAC, 3/31/10]

8.10.7.15 DOCUMENTATION TO COURT:

A. PSD shall complete and provide reports to the court and other parties as required by law.

B. The children's court attorney shall provide documentation and evidence so that the court may make specific

factual findings in determinations of:

(1) reasonable efforts to prevent removal;

(2) reasonable efforts not required to prevent removal;

(3) reasonable efforts to finalize the permanency plan in effect; or

(4) reasonable efforts to place siblings together unless joint placement would be contrary to the safety or well-being of any of the siblings, and whether siblings not jointly placed together have been provided reasonable visitation or other ongoing contact unless contrary to the safety or well-being of any of the siblings.

C. The children's court attorney shall provide the court with a documented description of the child's current foster care placement, and whether it is appropriate in terms of the educational setting and proximity to the school the child was enrolled in at the time of the placement, including plans for travel for the child to remain in the school in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

D. The children's court attorney shall document to the court the compelling reasons for seeking placement in the legal custody of PSD under a planned permanent living arrangement as the child's permanency plan when PSD has considered reunification, adoption, permanent guardianship, or placement with a fit and willing relative, and has concluded that these are not the most appropriate permanent plans for the child.

E. If the court adopts a permanency plan other than reunification, the children's court attorney shall provide documentation and evidence so that the court may make a specific factual finding in determinations of reasonable efforts to identify and locate relatives, and to conduct homestudies on relatives expressing an interest in providing permanency for the child.

F. The Children's Code refers to three types of transition plans, with varying requirements depending on the case for review by the court.

(1) The transition plan designed to assist the youth in living independently: This plan, as defined in the Children's Code, Section 32A-4-2(I) NMSA 1978, is an individualized written plan based on the unique needs of the youth outlining services to be provided to increase the youth's independent living skills. PSD considers this plan the youth's life skills plan. The youth's life skills plan is required for each youth sixteen (16) years of age and older, and shall be included in the youth's pre-dispositional report as required in Children's Code, Section 32A-4-21(B)(11) NMSA 1978. The youth's life skills plan shall also be included in the youth's case plan, and reviewed by the

court at every judicial review or permanency hearing. (See youth services policy, 8.10.9.11 NMAC.)

(2) The youth transition plan designed to assist the youth in transitioning to adult living: This plan, as described in the Children's Code, Section 32A-4-25.2(B) NMSA 1978, is required prior to the youth reaching age seventeen (17). The plan is developed collaboratively at a transition meeting by the youth, the youth transition specialist, the youth's youth attorney, and whom ever else the youth chooses to invite. The plan shall identify a youth's needs, strengths and goals in the areas of safety, housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services. In accordance with the Children's Code, Section 32A-4-25.3 NMSA 1978, the transition plan shall be reviewed and ordered by the court at the discharge hearing (see herein at 8.10.7.19 NMAC), the first hearing scheduled after the child's seventeenth (17th) birthday and at every subsequent review and permanency hearing (See youth services policy, 8.10.9.12 NMAC).

(3) The transition home plan designed to achieve successful reunification of a child: A transition home plan shall be developed and presented to the court at the time of the permanency hearing when PSD is proposing the court adopt a permanency plan of reunification. The transition home plan shall identify the steps that must be taken to achieve the child's successful transition home (see herein at 8.10.7.18 NMAC and the Children's Code, Section 32A-4-25.1(C) NMSA 1978).

[8.10.7.15 NMAC - Rp, 8.10.7.19 NMAC, 3/31/10]

8.10.7.16 RIGHTS OF PARENTS AND RESPONDENTS:

A. Parent's rights: Mothers, fathers who are married to the child's mother, and adoptive parents have a constitutionally protected liberty interest in rearing the child. Additionally, those unmarried biological fathers who participate in the child's life as a parent have a similar constitutionally protected liberty interest. At the inception of the case, PSD identifies those parents with protected rights.

B. PSD shall inform parents of their rights at the commencement of the investigation.

C. The court shall inform the respondent of his or her rights at the respondent's first appearance. Under Children's Court Rule 10-314, those rights include:

(1) notice of the allegations of the petition;

(2) the right to trial on the petition;

(3) the right to be represented by an attorney; and

(4) the possible consequences if the allegations of the petition are found to be true.

D. Biological fathers who participate in the child's life have a constitutionally protected liberty interest and shall be accorded all of the notice and reasonable efforts protection under the Children's Code. Those biological fathers who do not participate in the child's life have no protected liberty interest and shall not be entitled to notice of the protections offered under the Children's Code.

E. PSD shall attempt to obtain a sworn statement from the mother on the identity of the father, or shall place the mother on the stand and ask questions concerning the father's identity.

F. PSD shall check the putative father registry if the mother does not identify any person as the father.

[8.10.7.16 NMAC - Rp, 8.10.7.15 NMAC, 3/31/10]

8.10.7.17 NOTIFYING RELATIVES:

A. PSD shall exercise due diligence to identify and notify adult relatives of a child's removal within thirty (30) days of the removal. The notice shall inform relatives of their option to become a placement resource for the child.

B. If the parent is unable or unwilling to provide the PSD worker with names and contact information of relatives, the children's court attorney shall inform the court and ask the court to question the parents about relatives. The children's court attorney shall include in the court order that the parents will provide names of relatives, for possible relative placement, to PSD and attorneys of record five (5) days from the date of the hearing.

C. At the permanency hearing, when the court adopts a plan other than reunification, the children's court attorney shall request that the court determine whether or not the department has made reasonable efforts to identify and locate, and conduct home studies of any appropriate relative expressing an interest in providing permanency for the child.

[8.10.7.17 NMAC - N, 3/31/10]

8.10.7.18 PERMANENCY HEARING REQUIREMENTS:

A. A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months from the date a child enters foster care, whichever occurs first.

B. If the court adopts a permanency plan of reunification at the permanency hearing, the court shall adopt a transition home plan for the child, and schedule a permanency review hearing

within three (3) months. If a child is reunified, the subsequent hearing may be vacated.

C. If the court adopts a permanency plan other than reunification at the permanency hearing, the court shall determine whether or not PSD has made reasonable efforts to identify and notify all grandparents and other relatives. The court shall also determine whether or not the department has made reasonable efforts to conduct home studies on any appropriate relative interested in providing permanency for the child. If the court finds reasonable efforts have not been made to identify and locate relatives or to conduct home studies on relatives, the court shall schedule a permanency review hearing within sixty (60) days to determine whether an appropriate relative placement has been made. If a relative placement is made, the subsequent hearing may be vacated.

D. The court shall hold permanency hearings every twelve (12) months when a child is in the legal custody of PSD.

E. PSD shall provide the foster parent(s) of a child and any pre-adoptive parent(s) or relative(s) providing care for the child with timely notice of permanency hearings and notice of their right to be heard in permanency hearings and permanency review hearings. The right to be heard does not confer the right to standing as a party to the case.

F. The children's court attorney shall ensure that PSD's report to the court for the permanency hearing documents that PSD has considered out-of state, as well as in-state permanent placements for the child.

G. If the child is in an out-of-state placement at the time of the permanency hearing, the children's court attorney shall request a finding that the out-of-state foster care placement continues to be appropriate and in the child's best interests.

[8.10.7.18 NMAC - Rp, 8.10.7.30 NMAC, 3/31/10]

8.10.7.19 DISCHARGE HEARING AND CONTINUED JURISDICTION OF THE COURT:

A. The discharge hearing is the last review or permanency hearing held prior to the youth's eighteenth (18th) birthday at which the court shall review the youth's transition plan (see herein at Paragraph (2) of Subsection F of 8.10.7.15 NMAC) and shall determine whether or not PSD has made reasonable efforts to provide the youth with information and assistance as required in the Children's Code, Section 32A-4-25.3, NMSA 1978 (See youth services program, 8.10.9.17 NMAC).

B. If the court determines reasonable efforts were not made and that

termination of jurisdiction would be harmful to the young adult, the court may continue to exercise its jurisdiction for a period not to exceed one (1) year from the youth's eighteenth (18th) birthday. The young adult may consent to continued jurisdiction of the court. The court may dismiss the case at any time after the youth's eighteenth (18th) birthday for good cause.

[8.10.7.19 NMAC - N, 3/31/10]

8.10.7.20 NOTICE AND OPPORTUNITY TO BE HEARD AT REVIEWS:

PSD shall give notice to all parties, the child's guardian ad litem or youth attorney if fourteen (14) years or older, the child's court appointed special advocate, the contractor administering the citizen review board, the child's foster parents, pre-adoptive parents, or relative caregiver, of the time, place and purpose of any judicial review hearing held pursuant to the Children's Code, Section 32A-4-25(A) or (B) NMSA 1978, including hearings held after a termination of parental rights has occurred. Notice to the child's foster parents, pre-adoptive parents, or relative caregiver shall include notice of the right to be heard at the review hearing. Such notice does not confer the right to standing as a party to the case.

[8.10.7.20 NMAC - Rp, 8.10.7.31 NMAC, 3/31/10]

8.10.7.21 TERMINATION OF PARENTAL RIGHTS:

A. The children's court attorney shall attend the change of plan staffing when PSD is considering recommending to the court that a child's plan be changed to adoption. PSD shall pursue a motion to terminate parental rights within forty-five (45) days of the PSD staffing establishing a plan of adoption for the child, or when it is clinically indicated.

B. In the case of a child who has been in foster care fifteen (15) of the most recent twenty-two (22) months, PSD shall pursue a motion to terminate parental rights by the end of the fifteenth (15th) month in foster care, unless the child is being cared for by a relative, or PSD has documented compelling reason(s) for not filing; or PSD has not provided to the family those services deemed necessary for the safe return of the child within the time period in the case plan. PSD calculates the fifteen (15) of the most recent twenty-two (22) month period from the date the child entered foster care, uses a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the twenty-two (22) month period, and excludes trial home visits and runaway episodes in calculating the fifteen (15) months. If there are compelling reasons for not seeking to terminate parental rights, those reasons shall

be documented in the case plan.

[8.10.7.21 NMAC - Rp, 8.10.7.22 NMAC, 3/31/10]

8.10.7.22 RELINQUISHMENT OF PARENTAL RIGHTS:

A. Relinquishments may only be taken in furtherance of a plan of adoption, or in cases where a severance of the parent-child relationship is therapeutically necessary for the child's emotional or physical well-being.

B. The children's court attorney shall create a record in the district court that the relinquishment is voluntary, and that no promises were made to the parent, no fraud was involved, that the parent understands the consequences and the finality of the decision, and unless the adoption is open, the court shall not enforce any agreements regarding contact with the child.

C. No one may relinquish parental rights to PSD without PSD's consent.

D. In any case involving an Indian child, the relinquishment shall only be taken in state court if the parent is domiciled off-reservation. Otherwise, the tribal court has exclusive jurisdiction.

(1) PSD shall make a record concerning the parent's domicile prior to the relinquishment being taken.

(2) PSD shall not accept the relinquishment of an Indian child until ten (10) days after the birth of the child.

E. PSD shall not accept the relinquishment of a child within until forty-eight (48) hours after the birth of the child.

F. **U n c o n d i t i o n a l** relinquishments are preferred. Conditional relinquishments must be for good cause and approved by the court.

(1) PSD may accept a conditional relinquishment when the relinquishing parent(s) designates an adoptive parent(s) whose homestudy has been approved, or when the relinquishment contemplates the termination of parental rights of the other parent.

(2) PSD shall not accept a conditional relinquishment with the condition that the relinquishing parent shall be a post-adoption contact.

[8.10.7.22 NMAC - Rp, 8.10.7.23 NMAC, 3/31/10]

8.10.7.23 P E R M A N E N T GUARDIANSHIP: PSD may move the court for an order establishing a permanent guardianship for the child.

[8.10.7.23 NMAC - Rp, 8.10.7.24 NMAC, 3/31/10]

8.10.7.24 M E D I C A L NEGLECT:

A. PSD shall respond to reports of medical neglect of children

(including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions) and shall take the necessary legal action to protect those children.

B. The term withholding medically indicated treatment shall not apply in the following circumstances:

(1) the child is chronically and irreversibly comatose;

(2) the provision of such treatment would merely prolong dying or otherwise be futile in terms of the survival of the child; or

(3) the provision of such treatment would be virtually futile in terms of survival of the child and the treatment itself under such circumstances would be inhumane.

C. Nothing in section shall limit existing protection available under state law regarding medical neglect of children over one (1) year of age.

[8.10.7.24 NMAC - Rp, 8.10.7.20 NMAC, 3/31/10]

8.10.7.25 REMOVING CHILD FROM LIFE SUPPORT SYSTEMS:

A. PSD shall seek parental consent to removing a child in PSD custody from life support systems.

B. When parents refuse consent, the children's court attorney shall request an emergency court setting on the issue and give notice to the parents.

C. PSD shall keep the guardian ad litem or youth attorney fully informed and shall seek their concurrence with PSD's recommendation.

[8.10.7.25 NMAC - Rp, 8.10.7.21 NMAC, 3/31/10]

8.10.7.26 MENTAL HEALTH: Anytime a child in the custody of PSD is in need of placement in a mental health facility, the children's court attorney shall file an appropriate pleading with the district court.

[8.10.7.26 NMAC - Rp, 8.10.7.25 NMAC, 3/31/10]

8.10.7.27 FAMILY IN NEED OF COURT-ORDERED SERVICES:

PSD shall decide when it is appropriate to file a family in need of court-ordered services petition, in accordance with the Children's Code, Section 32A-3B et seq. NMSA 1978. Services to the child or family may be ordered when the child or family has refused services, or appropriate and available services have been exhausted and any of the following circumstances exist:

A. The child, subject to compulsory school attendance, is absent from school without an authorized excuse more than ten days during a school year.

B. The child has been absent from the child's place of residence for twelve hours or more without consent of the parent, guardian or custodian.

C. The child refuses to return home and there is good cause to believe the child will run away from home if forced to return to the parent, guardian or custodian.

D. The child's parent, guardian or custodian refuses to allow the child to return home and a petition alleging neglect of the child is not in the child's best interests.

[8.10.7.27 NMAC - Rp, 8.10.7.26 NMAC, 3/31/10]

8.10.7.28 INDIAN CHILD WELFARE ACT (ICWA): The Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), hereinafter referred to as "ICWA", was enacted to protect the best interests of Indian children and preserve tribal integrity by reducing the destruction of Indian culture caused by the removal of children from Indian homes and environments. The ICWA provides that the states and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children.

A. A tribe has exclusive jurisdiction over any child custody proceedings, as defined in 25 U.S.C. 1903, involving a child who resides or is domiciled within the tribe's reservation.

B. If a child is a ward of the tribal court, the tribe retains exclusive jurisdiction even if the child's residence changes to a location off-reservation. PSD acts in an emergency to protect the child, when the child is temporarily off-reservation. PSD shall notify the tribe as soon as possible and facilitates a transfer of the case to the tribe.

C. When a child is domiciled or resides off the reservation, the state and the tribe both have jurisdiction.

D. When an Indian child is the subject of an abuse or neglect, family in need of court ordered services, or adoption action under the New Mexico Children's Code, the tribe may intervene.

E. PSD supports requests to transfer to tribal court absent good cause to the contrary, objection by either parent or declination by the tribal court. Good cause not to transfer the proceeding may exist in any of the following circumstances:

(1) The proceeding was at an advanced stage when the request to transfer was received and the entity making the request did not file the request promptly after receiving notice of the hearing.

(2) The Indian child is over twelve years of age and objects to the transfer.

(3) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.

(4) The parents of a child over five years of age are not available and the child

has had little or no contact with the child's tribe or members of the child's tribe.

F. PSD shall receive and investigate reports of child abuse or neglect in conformance with ICWA and as outlined in PSD policy on intake and investigations.

G. If a child taken into custody is an Indian child and is alleged to be neglected or abused, PSD shall notify the child's tribe in accordance with ICWA.

H. PSD shall conform to the placement preferences set forth in ICWA and in the Children's Code, Section 32A-4-9 NMSA 1978.

I. PSD shall honor the request of a parent of an Indian child to remain anonymous insofar as it relates to the parent's extended family, as specified by the parent. However, PSD shall tell the parent about the requirement to notify the tribe, and explains to the parent that PSD cannot guarantee anonymity on the part of the tribe. [8.10.7.28 NMAC - Rp, 8.10.7.27 NMAC, 3/31/10]

8.10.7.29 SPECIAL IMMIGRANT JUVENILE STATUS (SIJS):

A. In those cases in which a child is an undocumented immigrant, and if the permanency plan does not include reunification and PSD does not recommend that the child be returned to the country of origin, PSD shall determine whether the child may be eligible for SIJS under federal law. Under federal law, in addition to legal requirements of being under court jurisdiction and the court making the necessary judicial determination, a child must be in the United States, unmarried and under the age of twenty-one (21).

B. If the child is eligible for SIJS, PSD shall move the court for a SIJS order containing a judicial determination that the child is deemed unable to reunify with one or both parents due to abuse, neglect or abandonment, and that it is not in the child's best interest to return to the country of nationality or last habitual residence. PSD's motion shall include a statement of the express wishes of the child, as expressed by the child or the child's guardian ad litem or attorney.

C. If it has been determined that it is in the child's best interest to file a petition for SIJS and an application for adjustment of status, then within sixty (60) days after an entry of the SIJS order, PSD shall file a petition for SIJS and an application for adjustment of status on behalf of the child.

D. If a petition and application have been filed and the petition and application has yet to be granted by the time the child reaches eighteen (18) years of age, the court may retain jurisdiction over the case for the sole purpose of ensuring that

the child continues to satisfy the requirement for SIJS.

E. The children's court attorney shall request court jurisdiction and set review hearings pending the granting of SIJS. The children's court attorney shall provide judicial review reports for a child for whom the court has granted the SIJS order, and shall advise the court of the status of the petition and application process concerning the child.

F. The court's jurisdiction terminates upon the final decision of the federal authorities, however the court may not retain jurisdiction of the case after the child's twenty first birthday.

[8.10.7.29 NMAC - Rp, 8.10.7.28 NMAC, 3/31/10]

8.10.7.30 CONSULAR NOTIFICATION:

A. When PSD is given custody of a foreign national child, PSD shall notify that child's foreign national consulate in writing without delay after obtaining custody. If it is unclear whether the child is a foreign national, it is best practice to give the consulate notice.

B. When PSD obtains custody of a child who has at least one parent who is a foreign national, PSD shall notify the appropriate foreign consulate without delay.

[8.10.7.30 NMAC - N, 3/31/10]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 10 CHILD D PROTECTIVE SERVICES PART 9 YOUTH SERVICES

8.10.9.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD), Protective Services Division (PSD).

[8.10.9.1 NMAC - Rp, 8.10.9.1 NMAC, 3/31/10]

8.10.9.2 SCOPE: PSD employees and the general public.

[8.10.9.2 NMAC - Rp, 8.10.9.2 NMAC, 3/31/10]

8.10.9.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, 9-2A-7 D, NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Cum. Supp. 2009).

[8.10.9.3 NMAC - Rp, 8.10.9.3 NMAC, 3/31/10]

8.10.9.4 DURATION: Permanent.

[8.10.9.4 NMAC - Rp, 8.10.9.4 NMAC, 3/31/10]

8.10.9.5 EFFECTIVE DATE: March 31, 2010, unless a later date is cited at the end of a section.

[8.10.9.5 NMAC - Rp, 8.10.9.5 NMAC, 3/31/10]

8.10.9.6 OBJECTIVE: To establish standards and practices for the provision of services to older youth aged fifteen and a half (15.5) or older in protective services division (PSD) custody, youth who have emancipated from foster care, and youth who were adopted from foster care after the age of sixteen (16); to promote the safety of the youth, promote positive youth development; and assist the youth in successfully transitioning into adult living.

[8.10.9.6 NMAC - Rp, 8.10.9.6 NMAC, 3/31/10]

8.10.9.7 DEFINITIONS:

A. "Adelante" is a non-governmental youth advocacy and advisory board composed of youth from around the state that represents current and former foster care youth. The board evaluates policies and practices of the child welfare system and advocates for system improvements. Adelante educates other youth, resource families, child welfare workers, and the general public on issues related to youth in foster care.

B. "Case plan" is an agreement developed between the youth, family (which may include but is not limited to biological family, foster family, or fictive kin), and other service providers outlining the tasks necessary to achieve the youth's identified goals.

C. "Chafee Act" refers to the John H. Chafee Foster Care Independence Act of 1999, which allows states to provide services and funds to youth likely to age out of foster care, youth adopted after the age of sixteen (16) from the foster care system, and youth who have emancipated from foster care.

D. "Discharge hearing" is a hearing required by the New Mexico Children's Code, Section 32A-4-25.3 NMSA 1978, that takes place at the last judicial review or permanency hearing held prior to the youth's eighteenth (18th) birthday. At the discharge hearing the court reviews the youth's transition plan and determines whether or not PSD has made reasonable efforts to meet the requirements outlined in the New Mexico Children's Code, Section 32A-4-25.3(B) NMSA 1978. (See herein at 8.10.9.17 NMAC)

E. "Education and training voucher (ETV) program" is a Chafee Act program that provides financial assistance to eligible youth who are enrolled

in an accredited post-secondary educational setting.

F. “FACTS” is the family automated client tracking system, PSD’s management information system.

G. “Fictive kin” is a person not related by birth or marriage who has an emotionally significant relationship with the child.

H. “Life skills” are the skills that a youth must develop to safely transition into adulthood, as identified in the independent living assessment discussed herein at 8.10.9.10 NMAC.

I. “National youth transition database (NYTD)” is a database, required by the Chafee Act. It tracks and reports on services provided to and outcomes for older youth.

J. “Out-of-home provider” refers to a foster care parent or other residential care provider.

K. “Permanency planning worker (PPW)” has primary responsibility for youth in custody and works in collaboration with the youth transition specialist (YTS) (herein defined at Subsection T of 8.10.9.7 NMAC) to promote the safety of the youth, promote positive youth development, and assist the youth in successfully transitioning into adult living.

L. “Planned permanent living arrangement (PPLA)” is a permanency plan for a child who resides in an out-of-home placement and is established when the court determines that this is the most appropriate permanency plan for the child after ruling out reunification, adoption, permanent guardianship, and placement with a fit and willing relative.

M. “Positive youth development” is a set of practices in working with youth to provide the necessary supports as they build their capacities and strengths to meet their personal and social needs. Youth are viewed as partners in working toward a successful transition to adulthood.

N. “PSD” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

O. “PSD custody” means custody of children as a result of an action filed under the New Mexico Children’s Code, Sections 32A-4-1 or 32A-3B-1 et seq. NMSA 1978.

P. “Start-up funds” are funds available through the Chafee Act to assist eligible youth in purchasing the household items and/or services needed to establish a home or to support the youth’s transition into adulthood. Start-up funds are described in further detail herein at 8.10.9.19 NMAC.

Q. “Transition support services” refers to an array of services provided by or arranged by the YTS for the

purpose of preparing and assisting youths in their transition to adulthood.

R. “Youth in custody” means youth age fifteen and a half (15.5) or older in the legal custody of PSD through an abuse/neglect petition or family in need of services petition filed under the New Mexico Children’s Code, Sections 32A-4-1 or 32A-3B-1 et seq. NMSA 1978.

S. “Youth services” means any independent living or transition service arranged or provided by a YTS (in collaboration with permanency planning services) to a youth in custody, a youth who has emancipated from foster care, or a youth who was adopted after the age of sixteen (16) in order to promote the safety of the youth, promote positive youth development, and assist the youth in successfully transitioning into adult living.

T. “Youth transition specialist (YTS)” is a PSD worker who works in conjunction with the PPW with regard to all youth in custody age fifteen and a half (15.5) or older, including youth who are age eighteen (18) who remain under the jurisdiction of the court, and any youth with a permanency plan of PPLA. The YTS has primary responsibility for youth who have emancipated from foster care and are working with PSD on a voluntary basis.

[8.10.9.7 NMAC - Rp, 8.10.9.7 NMAC, 3/31/10]

8.10.9.8 PURPOSE OF

YOUTH SERVICES: Youth services shall be provided to assist youth in successfully transition into adult living; to promote the safety of youth; and to promote positive youth development. Youth services shall be provided to youth in custody, youth who have emancipated from foster care, and youth who were adopted after the age of sixteen (16) from foster care.

[8.10.9.8 NMAC - N, 3/31/10]

8.10.9.9 ELIGIBILITY FOR YOUTH SERVICES:

A. Youth services shall be provided to all youth in the custody of PSD through an abuse or neglect petition, or a family in need of court ordered services petition, including youth in residential treatment or incarcerated youth, and youth with a partial or complete developmental, emotional or physical disability.

B. Eligibility requirements according to the specific service components involved. See 8.10.9.18-22 NMAC herein for eligibility requirements related to the specific service components of the youth services program.

[8.10.9.9 NMAC - N, 3/31/10]

8.10.9.10 INDEPENDENT LIVING ASSESSMENT:

A. The initial independent

living assessment (IL assessment) shall be completed by all youth in PSD custody and his or her PPW within sixty (60) days:

(1) of a youth in PSD custody turning fifteen and a half (15.5) years of age;

(2) when a youth over the age of fifteen and a half (15.5) years enters PSD custody and remains in custody after the custody hearing; or

(3) of the court establishing of a PPLA plan for a youth under the age of fifteen and a half (15.5) years.

B. The IL assessment consists of three components:

(1) the Ansell-Casey life skills assessment;

(2) a current psychosocial history focused on the youth’s strengths and goals; and

(3) a screening to determine whether a referral for adult protective services is warranted.

C. The PPW shall prepare a written summary of the IL assessment in FACTS. A copy the assessment and the summary are provided to the youth and his or her out-of-home provider.

D. The PPW may conduct a reassessment at any time. A reassessment shall be conducted prior to the youth’s transition meeting if, at the time of the meeting, it will have been twelve (12) months or more since the previous assessment was completed. A youth may also request a reassessment at any time.

[8.10.9.10 NMAC - N, 3/31/10]

8.10.9.11 LIFE SKILLS PLAN:

A. The life skills plan is plan required by the New Mexico Children’s Code, Section 32A-4-21 (B)(11) NMSA 1978, for each youth aged sixteen (16) or older in PSD custody that PSD shall present to the court prior to a dispositional hearing, regardless of the youth’s permanency plan and for younger youth with a plan of PPLA. The PPW shall develop the plan with input from the youth, the YTS and the youth’s out-of-home provider using the results of the IL assessment.

B. The life skills plan shall identify the activities, tasks, and services needed for the youth to develop the life skills necessary to safely transition into independent living as an adult regardless of whether the child is returned to the parents home. The plan shall contain specific time frames and responsibilities for each activity included.

C. The plan shall be included in the youth’s case plan and is reviewed by the court at every judicial review or permanency hearing.

[8.10.9.11 NMAC - N, 3/31/10]

8.10.9.12 LIFE SKILLS DEVELOPMENT: Life skills development

shall be required for all youth in PSD custody regardless of permanency plan beginning no later than age sixteen (16). Life skills development is an individualized process of learning the knowledge and skills necessary to be successful in living as an adult. It may include, but is not limited to group learning, taking advantage of teachable moments, individual practice with out-of-home providers, and use of community resources.

[8.10.9.12 NMAC - N, 3/31/10]

8.10.9.13 TRANSITION SUPPORT SERVICES:

Transition support services shall be provided by or arranged by the YTS for the purpose of preparing and assisting youth in their transition to adulthood. Services begin at the preparation for the transition meeting and may continue until the youth turns twenty-one (21) years of age. Youth in PSD custody shall be eligible for transition support services. Youth who have emancipated from foster care and youth eighteen (18) to twenty-one (21) years of age who were adopted after the age of sixteen (16) may request transition support services.

[8.10.9.13 NMAC - N, 3/31/10]

8.10.9.14 YOUTH LEADERSHIP SKILLS:

PSD workers shall identify opportunities for youth to develop leadership skills including, but not limited to membership in Adelante, the statewide youth advisory board, participation in the annual independent living youth conference, training and public speaking. Youth in PSD custody are eligible for youth leadership skills. Youth who have emancipated from foster care and youth who were adopted after the age of sixteen (16) may request to participate in youth leadership skills development opportunities.

[8.10.9.14 NMAC - N, 3/31/10]

8.10.9.15 TRANSITION MEETING:

Pursuant to the New Mexico Children's Code, Section 32A-4-25.2.A NMSA 1978, PSD shall conduct a transition meeting for each youth in custody prior to the youth's seventeenth (17th) birthday. The meeting includes the youth, the youth's YTS, the child's attorney and others of child's choosing, including biological family members. The purpose of the meeting is to develop the youth's transition plan. (See 8.10.9.16 NMAC below.)

[8.10.9.15 NMAC - N, 3/31/10]

8.10.9.16 TRANSITION PLAN:

A. Pursuant to the New Mexico Children's Code, Section 32A-4-25.2 A, B and C NMSA 1978, a written individualized transition plan shall be developed collaboratively at the transition meeting by the youth, the YTS, the youth's youth attorney, and others in attendance at the meeting.

B. The transition plan shall identify a youth's needs, strengths and goals in the areas of safety, housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services. The plan shall identify activities, responsibilities and timeframes to address the goals specified in the transition plan.

C. Pursuant to the New Mexico Children's Code, Section 32A-4-25.2 B and C NMSA 1978, PSD shall present the transition plan to the court at the first hearing scheduled after the child's seventeenth (17th) birthday. The court shall order the transition plan for the child. The transition plan approved by the court shall be reviewed at every subsequent review and permanency hearing.

[8.10.9.16 NMAC - Rp, 8.10.9.11 NMAC, 3/31/10]

8.10.9.17 DISCHARGE HEARING:

A. Pursuant to the New Mexico Children's Code, Section 32A-4-25.3 NMSA 1978, at the last judicial review or permanency hearing held prior to the youth's eighteenth (18th) birthday, the court shall conduct the youth's discharge hearing.

B. At the discharge hearing the court shall review the youth's transition plan and determines whether or not the PSD has made reasonable efforts to:

(1) provide the youth with written information concerning the youth's family history, the whereabouts of any sibling, if appropriate, and education and health records;

(2) provide the youth with his or her social security card, certified birth certificate, state-issued identification card, death certificate of a parent and proof of citizenship or residence;

(3) assist the youth in obtaining medicaid, unless the youth is ineligible; and

(4) refer the youth for guardianship or limited guardianship if the youth is incapacitated.

C. If the court finds that PSD has not made reasonable efforts regarding all of the requirements in Paragraphs (1) - (4) of Subsection B of 8.10.9.17 NMAC above, and that termination of jurisdiction would be harmful to the young adult, the court may continue to exercise its jurisdiction for up to one (1) year after the youth's eighteenth (18th) birthday, provided the youth consents.

[8.10.9.17 NMAC - N, 3/31/10]

8.10.9.18 INDEPENDENT LIVING PLACEMENT STATUS (ILPS):

Independent living placement status allows an eligible youth to become his or her own vendor to receive substitute care monthly maintenance payments. The maintenance payment allows the youth to live as a boarder

with a foster parent or to live independently with limited PSD supervision regarding safety and appropriate use of funds.

A. A youth age eighteen (18) up to age twenty-one (21) who has emancipated from foster care may be eligible for an independent living placement as determined by the YTS with supervisory approval.

B. With the approval of the deputy director, a youth age seventeen (17) in PSD custody may be eligible for ILPS, with the monthly maintenance payment provided with state general funds.

C. To assess whether ILPS is appropriate for a youth age seventeen (17) the PPW shall review the IL assessment and all other relevant information and determines:

(1) that the youth has the basic skills necessary to safely live independently; and

(2) whether sufficient supports may be made available to the youth while living independently.

D. The PPW shall prepare a memorandum for decision to the PSD deputy director about whether ILPS is appropriate for a youth age seventeen (17), discussing the IL assessment and describing the housing the youth will secure.

E. Eligibility for ILPS is reassessed on a continuing basis and may be revoked at PSD's discretion.

F. Under no circumstance, may a youth in custody on runaway status simultaneously be on ILPS.

[8.10.9.18 NMAC - Rp, 8.10.9.13 NMAC, 3/31/10]

8.10.9.19 START-UP FUNDS:

Start-up funds shall be available for eligible youth to assist them in purchasing household items or services needed to establish a home or to further independence. Lifetime eligibility shall be limited to \$1500. Expenses which are eligible for the use of start-up funds are determined according to the standards of the Chafee Act.

[8.10.9.19 NMAC - Rp, 8.10.9.14 NMAC, 3/31/10]

8.10.9.20 EDUCATION AND TRAINING VOUCHERS (ETV):

ETV funds shall be available to eligible youth to assist them in obtaining post-secondary education or vocational training. ETV may not cover expenses already paid by scholarships, grants, loans, work study, etc. Receipt of ETV funds shall not affect a student's eligibility for other federal assistance. ETV funds shall be paid to the provider and shall not be distributed through personal checks payable to the youth. The assigned YTS shall assist the youth in filling out the necessary application and gathering the appropriate supporting documentation.

[8.10.9.20 NMAC - Rp, 8.10.9.15 NMAC, 3/31/10]

8.10.9.21 C H A F E E

MEDICAID: Youth age eighteen (18) up to twenty-one (21) who were in foster care on their eighteenth (18th) birthday shall be eligible for medicaid according to the provisions of the Chafee Act. Before the youth's eighteenth (18th) birthday, or upon the youth's request for medicaid benefits, the youth shall complete and sign the application for Chafee medicaid. The youth shall complete a new application and submit it to the YTS each year thereafter.

[8.10.9.21 NMAC - Rp, 8.10.9.16 NMAC, 3/31/10]

8.10.9.22 NATIONAL YOUTH IN TRANSITION DATATBASE (NYTD):

NYTD is a database required by the federal Chafee Act which tracks and reports on services provided to and outcomes for older youth. To ensure that data is accurately maintained for purposes of meeting NYTD requirements, the PPW shall update medical and education information in FACTS. Both the PPW and YTS shall document all services provided to the youth. The YTS shall work with the youth to complete the NYTD survey within forty-five (45) days of the youth's seventeenth (17th) birthday and at ages nineteen (19) and twenty-one (21).

[8.10.9.22 NMAC - N, 3/31/10]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

This is an amendment to 8.26.2 NMAC, Sections 7, 21, 22, 23, and 24 effective March 31, 2010.

8.26.2.7 DEFINITIONS:

A. "Administrative appeal" is a formal hearing for families whose license has been revoked, suspended, or not renewed. The family has the opportunity to present evidence to an impartial hearing officer in accordance with CYFD's Administrative Appeals regulations 8.8.4 NMAC.

B. "Administrative review" is an informal process that may include an informal conference or record review, and does not create any substantive rights for the family.

C. "Adoptee" refers to any person who is the subject of an adoption petition.

D. "Adoption" is the establishment of a court sanctioned legal parental relationship between an adult and a child.

E. "Adoption subsidy"

is a third party payment program that may include reimbursement for adoption related expenses, monthly maintenance payments, medical provisions, or payments for pre-approved expenses for pre-existing conditions.

F. "Adoption tax credit" is a federal or state tax credit program that may be available to families who adopt children from foster care.

G. "Adoptive home" refers to:

(1) a foster home licensed by PSD or a licensed child placement agency who chooses to adopt a foster child; or

(2) a family approved by a private agency or a licensed individual to adopt a child.

H. "Assessment" is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine the suitability of an applicant for a foster parent license.

I. "Best interest adoptive placement" is the adoption placement considered by PSD staff to be the most appropriate placement to meet the child's needs and best interest.

J. "Case management team" means the group of individuals with responsibility for implementing the case plan which may include PSD staff, parents or relatives, and the child if age appropriate.

K. "Community service providers" refers to organizations or individuals that provide support services to families, and may include CYFD contractors or any public or private agency or individual.

L. "Concurrent plan" refers to case planning and legal practices providing reunification services while simultaneously implementing an alternative case plan should the reunification efforts be unsuccessful.

M. "Consent to adoption" is a document signed by the adoptee if the child is fourteen (14) years of age or older consenting to the adoption.

N. "Conversion adoption" refers to an adoption in which the child's foster parents have adopted the child.

[N-] O. "CYFD" means the New Mexico children, youth and families department.

[O-] P. "Disruption" means the removal of a child by CYFD from a pre-adoptive home after an adoptive agreement has been signed, but prior to the finalization of the adoption.

[P-] Q. "Dissolution" means the legal termination of an adoption.

[Q-] R. "Fictive kin" is a person not related by birth or marriage who has a significant relationship with the child.

[R-] S. "Foster care maintenance payment" is the monthly

reimbursement to foster care providers for costs associated with the child's room and board, and other expenses. Payments are determined by the child's age and level of care.

[S-] T. "Foster parent" refers to a person or persons licensed by CYFD or a licensed child placement agency to provide emergency, respite, stranger, relative or fictive kin, or treatment foster care services. The parent(s) may also be concurrently licensed to adopt. The term foster parent also refers to an adoptive parent whose adoption has not yet finalized.

[T-] U. "Foster parent bill of rights" is a statement of PSD's responsibilities to foster parents.

[U-] V. "Freed for adoption" means all parental rights are terminated and all time for appeal is exhausted.

[V-] W. "Home study" is the final written document that results from the assessment process to determine the suitability of an applicant for a foster parent license.

[W-] X. "Individualized adoption plan (IAP)" is an individualized and specific recruitment plan developed by PSD staff for children who have a plan of adoption.

[X-] Y. "Initial relative or fictive kin assessment" is an in-home assessment of relative or fictive kin completed by the child's caseworker to determine suitability for provisional licensure.

[Y-] Z. "Level 1 foster care" is the basic level of foster care services. Every child, except for those with documented serious medical or behavioral conditions, enters foster care as a level 1.

[Z-] AA. "Level 2 foster care" is for children requiring a higher level of care, structure, or supervision than would be required for a child of similar age development. Level 2 requires a PSD assessment and PSD supervisory approval.

[AA-] BB. "Level 3 foster care" is for children requiring a significantly high level of care and is generally an alternative to institutional care. Level 3 requires a medical or psychological clinical assessment and PSD deputy director approval.

[BB-] CC. "Life book" is a combination of documents that remains with the child that may include photos, letters, correspondence, development milestones, memorabilia and other items related to the child's life.

DD. "Non-conversion adoption" refers to an adoption in which a child is placed in a pre-adoptive home, for the purposed of adoption, which did not serve as a foster home for the child.

[EE-] EE. "Non-recurring adoption expenses (NRAE)" are

reasonable and necessary adoption fees that may include transportation, food and lodging for the child and adoptive parent, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which have not been reimbursed from other sources or funds.

[DD:] FF. “Post adoption contact agreement (PACA)” is an agreement between the birth and adoptive families regarding contact between them after the adoption has been finalized.

[EE:] GG. “Post placement support services” are services intended to strengthen families and support adoptive placement provided by PSD staff, or community service providers to children in custody and their pre-adoptive families to enhance the family’s capacity to care for the child, assure the stability of the placement, and help the family meet the requirements to finalize the adoption.

[FF:] HH. “Post decree support services” are services provided by PSD staff or community service providers to children and families who have finalized an adoption to enhance the family’s capacity to care for the child and support family functioning.

[GG:] II. “Pre-adoptive home” refers to a family who has signed the adoption agreement to adopt a foster child, but the adoption has yet to finalize.

[HH:] JJ. “Protective services division (PSD)” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

[I:] KK. “PSD custody” means custody of children as a result of an action filed under the New Mexico Children’s Code 32A-4-1 et seq., NMSA 1978 or 32A-3B-1 et seq., NMSA 1978.

[JJ:] LL. “Relative” refers to mothers, fathers, brothers, sisters, grandparents, aunts, uncles, nieces, nephews, first cousins, mother-in-laws, father-in-laws, sister-in-laws and brother-in-laws, as well as fictive kin.

[KK:] MM. “Surrogate parent”:

(1) a person, other than the child’s case worker, appointed by the New Mexico department of health family, infant and toddler program director to represent the special needs of a child in all matters related to the early intervention and evaluation assessment and treatment for the child in the event the parent is unable or unwilling to act in that capacity; or

(2) a person, other than the child’s case worker, appointed by the court who stands in for the parent of a student who qualifies for special education to protect the student’s educational rights, and act as the student’s advocate in the education decision

making process in the event the parent is unable or unwilling to act in the capacity.

NN. “Transition calendar” refers to the calendar which is developed once the family has accepted the child for an adoptive placement.

[O:] OO. “Traveling file” includes copies of the medical and educational records related to the foster child. The traveling file shall remain with the child.

[8.26.2.7 NMAC - Rp, 8.26.2.7 NMAC, 5/29/09; A, 3/31/10]

[8.26.2.23] 8.26.2.21 F U L L DISCLOSURE:

A. Prior to placement, PSD staff shall provide full disclosure about the child to the foster or adoptive family, and continue to provide full disclosure throughout the case and after finalization of the adoption, provided the information does not reveal information that would identify the biological family. Pursuant to the Adoption Act, 32A-5-3 (N) NMSA 1978, full disclosure information includes:

- (1) health history;
- (2) psychological history;
- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical description;
- (8) social history;
- (9) placement history; and
- (10) education.

B. All records, whether on file with the court, an agency, PSD, an attorney or other provider or professional services in connection with an adoption are confidential pursuant to the Adoption Act, 32A-5-8 NMSA 1978. A person who intentionally and unlawfully release any information or records closed to the public pursuant to the Adoption Act or releases or make other unlawful use of records in violation of that act is guilty of a petty misdemeanor.

C. Documentation provided for the purpose of full disclosure shall remain the property of the person making the full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing the full disclosure. A prospective adoptive parent shall not make public any confidential information received during the full disclosure process, but may disclose such information only as necessary to make an informed placement decision, or to the child’s guardian ad litem or youth attorney.

[8.26.2.21 NMAC - Rp, 8.26.2.17 NMAC, 5/29/09; 8.26.2.21 NMAC - Rn, 8.26.2.23 NMAC, 3/31/10]

~~[8.26.2.21]~~ 8.26.2.22 P R E - PLACEMENT ACTIVITIES FOR [ADOPTION] NON-CONVERSION ADOPTIONS:

A. PSD placement staff in coordination with the child’s worker shall develop a calendar for the transition of the child to the adoptive home, except in the event a foster parent decide to adopt the child.

B. PSD staff and the adoptive family shall review and sign a placement agreement when the child is placed in the home.

C. Placement staff becomes responsible for the case form placement in the adoptive home until finalization of the adoption.

[8.26.2.22 NMAC - Rp, 8.26.2.18 NMAC, 5/29/09; 8.26.2.22 NMAC - Rn & A, 3/31/10]

~~[8.26.2.22]~~ 8.26.2.23 F O S T E R HOME ADOPTIONS:

A. PSD shall attempt to place foster children with concurrent plans of adoption in foster homes which have been identified as concurrent families.

B. PSD completes the pre-placement home study for foster parents and treatment foster parents who have been selected as adoptive parent for children in PSD custody.

[8.26.2.23 NMAC - N, 5/29/09; 8.26.2.23 NMAC - Rn, 8.26.2.22 NMAC, 3/31/10]

8.26.2.24 A D O P T I O N ASSISTANCE:

A. Adoption assistance is available to any family who adopts an eligible child through CYFD.

B. PSD determines if a child is eligible to receive state or federal adoption assistance based upon federal of state established criteria. PSD informs the adoptive family of the adoptee’s eligibility for adoption assistance.

C. Initial adoption agreement:

(1) PSD shall negotiate adoption assistance based on the family’s circumstances and any special needs of the child. The monthly adoption maintenance payment may not exceed the maximum monthly amount that was paid for the child in foster care. Where a private agent has licensed a foster family and the foster family has determined to adopt, the adoption subsidy shall be negotiated in the same manner as any other subsidy.

(2) Types of assistance available:

(a) Maintenance: Monthly adoption assistance maintenance payments for the eligible child shall be utilized to meet the child’s existing day to day needs and is not considered income. Monthly adoption assistance maintenance payments are

terminated on the child's eighteenth birthday. Adoption assistance may be extended until the child is twenty-one (21) years of age, if the child is certified medically fragile by the New Mexico department of health.

(b) Medical: Medical adoption assistance may be made on behalf of a child and shall cover only those pre-approved, pre-existing conditions that are not covered by the family's private or group medical insurance or medicaid, and does not include co-payments or deductible for which the patient is responsible. Medicaid is available in accordance with the laws, regulations or procedures of the state in which the child resides.

(3) Interstate placement: When the adoption of the child involves interstate placement, the state that enters into the adoption assistance agreement shall be responsible for paying the non-recurring adoption expenses of the child. In cases in which there is interstate placement, but no agreement for adoption assistance, the state in which the final adoption decree is issued shall be responsible for paying the non-recurring expenses if the child meets the requirements.

(4) With placement worker approval, the adoptive family may be reimbursed for non-recurring adoption expenses (NRAE) up to \$2000.00 per child in PSD custody. NRAE may include transportation and other reasonable expenses such as lodging and food for the child and adoptive parents that are not otherwise reimbursed. NRAE are not reimbursable in the event the adoption does not finalize. There is no income eligibility requirement for adoptive parents in determining whether payments for non-recurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(5) An adoptive family may receive a one-time only subsidy for legal services leading to the finalization of an adoption based on the adoption case regardless of number of siblings.

D. Prior to adoption finalization, the placement worker and the adoptive family shall sign the adoption assistance agreement that specifies adoption assistance and NRAE. Each Title IV-E subsidy agreement shall be completed and signed prior to the adoption finalization to be valid.

E. By signing the adoption assistance agreement, the adoptive parent agrees to immediately notify PSD of any of the changes listed below:

- (1) the adoptive parent is no longer legally responsible for the child;
- (2) the adoptive parent is no longer financially responsible for the child;
- (3) change of address, phone

numbers, or email addresses;

(4) change in the child's name and social security number;

(5) change in the family's needs or circumstances;

(6) change in electronic funds deposit information;

(7) the adoptive child no longer lives with the adoptive parents; or

(8) the death of an adoptive child.

F. Annual contact: On an annual basis PSD shall provide the adoptive family a form to complete and return to PSD attesting to the following:

(1) the family continues to have financial and legal responsibility for the child; or

(2) that the adopted child is a full time elementary or secondary student (or has completed secondary school). If the child is incapable of attending school on a full time basis due to medical condition, the adoptive parent must submit to PSD regularly updated medical information to support such incapability. The parent must certify one of the following:

(a) that the child is enrolled (or is in a timely process of enrolling) in an institution that provides elementary or secondary education and meets school attendance requirements in accordance with state law;

(b) that the child is being home schooled in an elementary or secondary school program that complies with state law; or

(c) that the child is in an independent study elementary or secondary school program that complies with state law and is administered by the local school or school district.

(3) the child is or is not covered by private medical insurance.

G. Adoption assistance shall be terminated based upon any of the following events:

(1) the child reaches eighteen (18) years of age, except in the event of medically fragile certification;

(2) PSD determines that the adoptive family is no longer legally responsible for the child; or

(3) PSD determines that the adoptive family is no longer providing any support to the child.

H. PSD shall notify the adoptive family in writing, by return of receipt mail, of any decision to reduce, change, suspend or terminate an adoption subsidy. The adoptive parent may request an administrative appeal within ten (10) days of receiving notification of the decision to reduce, change, suspend or terminate adoption subsidy.

[8.26.2.24 NMAC - Rp, 8.26.2.15 NMAC, 5/29/09; A, 3/31/10]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

This is an amendment to 8.26.4 NMAC, Sections 12, 13, and 19, effective March 31, 2010.

8.26.4.12 ASSESSMENT PROCESS FOR FOSTER OR ADOPTIVE HOME LICENSE:

A. Only qualified persons employed by PSD, qualified staff of licensed child placement agencies or individuals certified by PSD, as licensing agents shall conduct home studies. (See process for certification as a licensing agent as set forth in the Adoption Act Regulations, 8.26.3.17 NMAC)

B. Upon receipt of the application to become a foster or adoptive family, the licensing agent has five (5) days to contact the family.

C. Home study forms and requirements are determined by PSD. The SAFE home study is the approved format to be used in New Mexico.

D. All foster or adoptive applicants are assessed for their suitability to care for children who might be placed in their home. Although any previous foster care assessments and home studies that are obtainable shall be considered, the licensing agent shall conduct an independent assessment and home study.

E. PSD gives priority to applicants that meet the needs of children in PSD custody.

F. In addition to the CRC and abuse and neglect checks, as described herein at 8.26.4.10 and 8.26.4.11 NMAC, the minimum documentation required for the assessment process includes:

(1) a physical exam report, paid for by the applicant, which certifies that all adult household members are in good mental and physical health with a statement from the physician as to whether any medical conditions may affect the applicant's ability to care for a foster child; the medical report shall be dated within twelve (12) months of the application date and include a list of any prescribed medications and the reasons for which they are prescribed;

(2) immunization records or waiver issued by the department of health for any child residing in the home;

(3) a copy of the applicant's driver's license and proof of motor vehicle insurance for any vehicle used to transport a foster child;

(4) a copy of the applicant's current marriage license and all previous divorce decrees, if applicable;

(5) proof of school enrollment or

home schooling for all school aged children residing in the home;

(6) proof of the applicant's U.S. citizenship such as a social security card, or proof of permanent residency, such as a green card;

(7) a signed PSD approved release of information form; and

~~[(8) a signed copy of the CYFD HIPAA notice of privacy practices;~~

~~[(9)]~~ (8) a signed foster parent agreement, if applicable.

G. The licensing agent shall contact the three (3) references provided by the applicant and shall contact any adult children living out of the parental home. The purpose of the contact is to assist in determining the applicant's suitability to become a foster or adoptive parent.

H. The licensing agent shall conduct at least (1) one individual interview with each adult living in the applicant's home. This includes children, and any relatives or other adults living in the home. If any person(s) who lives in the home declines to be interviewed, the foster or adoptive home shall not be licensed or certified.

I. A minimum of two (2) home visits shall be made to the proposed foster or adoptive home.

J. The results of a foster home or relative foster home study are documented in PSD's approved home study format and filed in the foster parent record maintained by the licensing agent.

K. Once the home study process has been initiated, the licensing agent shall complete the home study within one hundred twenty (120) days for non-relative foster or adoptive homes, and ninety (90) days for relative foster or adoptive home.

[8.26.4.12 NMAC - Rp, 8 NMAC 27.3.14 & 15, 5/29/09; A, 3/31/10]

8.26.4.13 S A F E T Y CHECKLIST FOR FOSTER AND ADOPTIVE HOMES:

A. Heating, cooling, and ventilation:

(1) A foster home shall be adequately ventilated. There shall be an effective means of providing fresh air to children's sleeping rooms, including at least one window.

(2) Fuel-burning equipment, including natural gas or liquid propane gas cooking ranges shall be vented appropriately and meet applicable safety code requirements.

(3) Heating equipment shall be adequate to maintain interior temperature of 65 degrees fahrenheit in all rooms. Gas furnaces shall have a cut-off valve.

(4) The heating systems and associated equipment shall meet all

requirements of state and local safety codes.

B. Water:

(1) A foster home shall have an adequate supply of sanitary water.

(2) If water is not obtained from a public supply, a well water certificate from the New Mexico environment department shall be provided for initial licensure, and at five year intervals. Well water testing instructions and an application form are available on the environment department website. Bottled water may be used for cooking and drinking if the water source is assessed to be unsuitable.

(3) Water supply piping and associated equipment shall be installed and maintained in compliance with state and local safety codes. There shall be a pop-off valve on the hot water heater.

C. Sewage, waste and sanitation:

(1) A foster home shall be kept clean and free of accumulation of dirt, waste, and infestations of insects and rodents.

(2) Toilet and bathing facilities shall be provided and maintained in a sanitary manner.

(3) There shall be sanitary methods of household waste disposal which meet applicable safety codes.

(4) Foster homes shall be free of clutter that may cause tripping or falling hazards.

D. Electrical wiring and communication:

(1) Electrical wiring shall comply with state and local safety codes. If the licensing agent has doubt of the adequacy of electrical wiring, the licensing agent shall request the applicant arrange and pay for a local electrical inspector to inspect the wiring and submit a report to the licensing agent.

(2) Electrical extension cords shall not be used for general wiring.

(3) A readily available telephone in case of emergencies.

E. Kitchen and food storage:

(1) A foster home shall have a kitchen with sufficient storage space. Food shall be stored separately from cleaning supplies and other household chemicals.

(2) The kitchen shall be equipped with a refrigerator sufficient to maintain cold food storage in a temperature range between 33 degrees and 45 degrees fahrenheit.

(3) The kitchen and food preparation equipment and storage shall be maintained in a sanitary condition.

F. First aid and medical supplies:

(1) Foster parents shall maintain a stock of first aid supplies in the foster home. The minimum acceptable stock includes:

(a) one (1) box of non-medicated adhesive bandages;

(b) one (1) pair of blunt scissors;

(c) one (1) roll of two (2) inch or three (3) inch adhesive roller bandage;

(d) one (1) roll of one-half (1/2) inch adhesive tape;

(e) one (1) box of sterile first aid dressings in sealed envelopes;

(f) first aid cream and/or ointment.

(2) These shall be stored in a single cabinet or kit, separate from food storage or household cleaning supplies or other chemicals/poisons.

(3) Prescription medicines shall be supplied and administered only as prescribed. They shall be properly labeled, and stored separately from food, cleaning agents or other household chemicals and poisons. After the prescribed course of treatment has been completed, leftover medicine shall be disposed of in an appropriate manner.

G. Personal items:

(1) Each foster child shall be provided an individual comb, toothbrush, night clothes, and under garments which shall not be interchanged between children.

(2) Linens and bedding shall be stored and maintained in a manner assuring that they will be clean. All linens and bedding shall be laundered before use by another child.

H. Any animal, birds, and pets shall be in good health with documentation of current vaccinations, and have a temperament such that they will not be frightening or hazardous to foster children.

I. Foster home space, furnishing and sleeping arrangement:

(1) A foster home shall have a separate bedroom for the foster parents and for any other adults living in or frequently residing in the home. This shall not preclude a foster child under the age of eighteen (18) months from sleeping in the same room with his or her foster parents provided that the bedroom space is available for the foster child when he or she reaches the age of eighteen (18) months.

(2) There shall be a separate bed provided for each foster child, except that two (2) children of the same gender may sleep in the same double bed.

(3) A foster child over the age of five (5) years shall not share a bedroom with another non-related child of the opposite gender.

(4) The licensing agent may allow exceptions to the sleeping arrangement requirements to permit placement of siblings together in the same foster home.

(5) Sleeping quarters for foster children shall be a contiguous part of the main family residential building or apartment. Exceptions can be made for those children over sixteen (16) years of age who are preparing for independent living.

(6) There shall be sufficient closet

space or furniture storage space to permit the sanitary storage of children's clothes, linens and bedding.

(7) Furnishings shall be clean and maintained in a sanitary condition at all times.

J. Doors and locks:

(1) A foster home shall have at least two (2) designated exits that meet fire code standards.

(2) There shall be no interior door hardware which makes it possible for a child to be locked inside. All privacy locks shall be provided with emergency unlocking mechanisms.

K. Yard and play space:

(1) A foster home shall have access to a safe indoor and outdoor designated play area.

(2) In areas which have a high density of traffic or other hazards to children, the yard or play space shall be adequately fenced for the children's protection.

(3) All outdoor play space and toys, swings and other outdoor equipment shall be maintained in a sound state of repair and free of projecting sharp edges, splinters or other hazards to children.

L. Other safety issues:

(1) If the applicant operates an automobile, he or she shall have automobile insurance as required by law and a valid driver's license. Motor vehicles shall have safety restraints as required by law and shall have properly installed car seats for age appropriate children.

(2) For age appropriate children, a foster home shall have safety gates and locking mechanisms for cabinets that contain cleaning agents or chemicals.

(3) A foster home shall have at least one fire extinguisher.

(4) A foster home shall have smoke detectors appropriate for the square footage.

(5) A foster family shall develop a fire evacuation plan.

(6) A foster family shall provide to PSD or the agency contact information for at least two (2) locations (including one (1) out of town location) where the foster family would go in the event that a community evacuation is necessary.

(7) All weapons owned or acquired by a foster family shall be stored and locked with ammunition stored separately as per the PSD approved weapons safety agreement. The foster family shall provide a signed copy of the PSD approved weapons safety agreement to the licensing agent.

(8) All pool areas, including hot tubs, shall be adequately fenced or secured in order to prevent the access of children when not accompanied by an adult. Spas or hot tubs shall be securely covered to prevent the access of children when not in use. Outdoor ponds shall not be within the immediate play

area of children.

(9) Farm and ranch equipment shall not be easily accessible to foster children as a safety precaution. Farm animals shall be properly housed and secured as a safety precaution.

~~[(10) At initial licensure, homes built prior to 1980 must be tested for lead contamination. Homes that have been previously licensed and were built prior to 1980 will be tested for lead contamination at re-licensure. Once a home has been determined lead-free, the home will not have to be tested again.]~~

~~[(11) (10) At initial licensure, the licensing agent will check the [statewide methamphetamine contamination registry at] list of properties on clandestine drug laboratories in New Mexico website located on the New Mexico environment department homepage to verify the home has not been [registered] listed as a contaminated property. This verification shall be documented in the home study. Homes [which appear in the registry] that are listed as contaminated properties shall not be licensed. For homes that have been previously licensed, the licensing agent shall check the [statewide methamphetamine contamination registry] clandestine drug laboratories in New Mexico website at the time of re-licensure. If a home [is not on the registry,] has not been listed as a contaminated property, the licensing agent need not check the home again in further re-licensure.~~

(12) Smoking shall be prohibited in the house and in any vehicle used for transporting foster children.

[8.26.4.13 NMAC - Rp, 8 NMAC 27.3.11, 5/29/09; A, 3/31/10]

8.26.4.19 D E N I A L , REVOCATION, SUSPENSION, OR NON-RENEWAL OF A LICENSE:

A. Denial of a license:

(1) PSD or agency staff may deny an applicant's request for licensure based on a documented professional assessment that the applicant cannot adequately provide safety, permanency, and well-being for children or when in the professional opinion of the licensing agent, conditions in the prospective foster home are not conducive to the fostering of children.

(2) Applicant's may be denied licensure at any point in the licensing process. The applicant shall be notified in writing of the denial within ten (10) days of the decision.

(3) Applicants who have been denied an initial foster parent license may request an administrative review of the decision. This is an informal process completed by the licensing agent, which may include an informal conference or record review. The administrative review does not create any substantive rights for the family.

B. Revocation or non-

renewal of a license: A foster home license may be revoked or not renewed by PSD or a licensed child placement agency at any time for reasons which may include but are not limited to:

(1) disqualifying criminal records check results as described herein at Subsection D, E and F of 8.26.4.10 NMAC;

(2) disqualifying abuse and neglect check results as described herein at Subsection C, D, E and F of 8.26.4.11 NMAC;

(3) failure to comply with 8.26.2, 8.26.4, 8.26.5 NMAC and agency policies;

(4) failure to comply with safety measures, including those requirements described herein at 8.26.4.13 NMAC;

(5) returning a child to an agency without seeking support services provided by the agency or community service providers in order to preserve the placement;

(6) refusal to comply with case plan;

(7) inability to adequately meet the needs the child;

(8) failure to include children in family activities;

(9) overuse or inappropriate use of respite care;

(10) failure to actively preserve connections with foster children and their birth families and community of origin such as:

(a) siblings or other birth relatives;

(b) church community; and

(c) fictive kin, or the child's friends;

(11) failure to demonstrate the ability to provide emotional support during important developmental points in the course of a child's life;

(12) repeated refusals by the family to accept children who have been matched for placements;

(13) failure to participate in required training;

(14) failure to comply with PSD decisions regarding the child's safety, permanency, and well-being;

(15) abuse of substances including but not limited to:

(a) alcohol;

(b) illegal drugs; or

(c) prescription drugs or controlled substances;

(16) exposure of the child to cigarette smoking and tobacco products; and

(17) a documented professional assessment that continued licensure would be contrary to the safety, permanency, and well-being of the child, or in the opinion of the licensing agent that conditions in the foster home are not conducive to the fostering of children.

C. Suspension of a license:

Suspension of a license can be voluntary or involuntary and last not more than six (6)

months.

(1) Voluntary reasons for suspension must be approved by the licensing agency and may include, but not limited to:

(a) medical conditions;

(b) adoption; or

(c) life changes within the household.

(2) Involuntary reasons for suspension may include all the reasons described herein at Paragraphs (1) - (17) of Subsection B of 8.26.4.19 NMAC, as well as:

(a) screened-in abuse or neglect referrals; or

(b) during the period of a professional development plan.

D. Notification: The foster or adoptive family shall be notified in writing, by return of receipt mail, of the proposed action and the reason for revocation, involuntary suspension or non-renewal of the [license. The licensing agency will provide for a hearing before a hearing officer appointed by the secretary no earlier than twenty (20) days from receipt of the notice unless time limitation are waived. This is a formal process where the family has the opportunity to present evidence to an impartial hearing officer described herein at Subsection A of 8.26.4.7 NMAC.] license and shall, at a date and place to be specified in the notice, be given a hearing before an impartial hearing officer appointed by the CYFD secretary where the family has the opportunity to present evidence on their behalf and to be assisted by counsel. The hearing shall be held no earlier than twenty (20) days after receipt of notice thereof, unless the time limitations are waived.

E. Reinstatement or reissuance or license: A foster or adoptive family whose license has been revoked, suspended, placed on probation, or not renewed may petition the licensing agency that issued the license to have the license reinstated, or reissued upon proof that the noncompliance with the rules have ceased. [8.26.4.19 NMAC - Rp, 8.27.2.25 & 26 NMAC, 5/29/09; A, 3/31/10]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

This is an amendment to 8.26.5 NMAC, Sections 7, 14, 15 and 29, effective March 31, 2010.

8.26.5.7 DEFINITIONS:

A. "Act" means the Child Placement Agency Licensing Act, pursuant to 40-7A-1 et. seq. NMSA 1978.

B. "Acknowledged

father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, pursuant to the Adoption Act, 32A-5-20, NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate; is obligated to support the adoptee under a written voluntary promise or pursuant to a court order; or

(3) has openly held out the adoptee as his own child by establishing a custodial, personal or financial relationship with the adoptee as pursuant to the Adoption Act, 32A-5-3F (4)(a) and (b) NMSA 1978.

C. "Agency" or "child placement agency" means any PSD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services. An agency may be licensed as an adoption agency, a foster care agency or both.

(1) **"Adoption agency"** means an agency licensed by PSD to facilitate the adoption of a child or perform a function within the adoption process.

(2) **"Foster care agency"** means an agency licensed by PSD for the purpose of supervising foster care homes, treatment foster care homes, or other levels of foster care as developed by protective services division.

D. "Alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry as pursuant to the Adoption Act, 32A-5-20 NMSA 1978.

E. "Applicant" means an individual, partnership, unincorporated association or corporation who makes written application to become a licensed child placement agency in the state of New Mexico.

F. "Audit" means the review of an agency, as prescribed in these standards, for the purpose of determining if the standards outlined in these regulations are met.

G. "Best interest adoptive placement" is the adoption placement considered by PSD staff to be the most appropriate placement to meet the child's needs and best interest.

H. "Child abuse and neglect check" is a review of the PSD information management system (also known as FACTS) to determine if there have been any previous referrals to protective services division.

I. "Child placement agency" (see "agency").

J. "Client" means a foster care or adoptive parent applicant, foster care

or adoptive family, a foster or adoptive child, or the child's biological family who receives services from an agency.

K. "Corrective action" means action taken by the agency in order to correct deficiencies or non-compliance with these standards or the Child Placement Agency Licensing Act.

L. "Corrective action plan" means the written plan developed by the agency identifying the actions that will be taken to correct deficiencies or non-compliance with these standards or the Child Placement Agency Licensing Act; the plan shall be approved PSD licensing staff.

M. "Criminal records check (CRC)" means federal, state or local checks for criminal offenses conducted on employees of an agency who are direct service staff as defined herein at Subsection P of 8.26.5.7 NMAC, potential and current foster and adoptive parents, and adult members of a foster or adoptive parent household.

N. "CYFD" means the children, youth and families department of the state of New Mexico.

O. "Deficiency" means non-compliance with these standards, and other laws, compacts and regulations referenced herein.

(1) **"Minor deficiencies"** means those deficiencies that do not impair the safety, permanency or well being of a child in the agency's care.

(2) **"Substantial deficiencies"** means those deficiencies that impair the safety, permanency or well being of a child in the agency's care.

P. "Direct service staff" means supervisors, physicians, nurses, therapists, client care workers, coordinators or other agency personnel who work in immediate direct unsupervised contact with children.

Q. "Direct unsupervised contact" means physical proximity to clients, such that physical contact or abuse could occur, without being observed or noticed by another staff member who has been cleared by PSD.

R. "Emergency suspension" means the prohibition of operation of an agency for a stated period of time by the temporary withdrawal of the license, prior to a hearing on the matter, when immediate action is required to protect human health and safety.

[R-] S. "Full disclosure" means prior to placement, the agency shall provide full disclosure about the child to the foster or adoptive family and the child's PSD worker, and continue to provide full disclosure throughout the case and after finalization of the adoption, provided the information does not disclose information regarding the biological family in pursuant

to the Adoption Act, 32A-5-3 (N) NMSA 1978. (See 8.26.5.17 NMAC herein)

[S:] T. “Governing board” means the organizational entity of an agency that has the ultimate responsibility for all planning, direction, control, and management of the activities and functions of a program licensed pursuant to these standards.

[T:] U. “Home study” is the final written document that results from the assessment process to determine the suitability of an applicant for a foster parent license.

[U:] V. “Interstate compact on adoption and medical assistance (ICAMA)” is an agreement between member states that governs the interstate delivery of medical services for adopted special needs children.

[V:] W. “Legal risk” means an adoptive placement where birth parents or other individuals may have legal rights that have not been fully terminated at the time of placement. The prospective adoptive parents are fully informed of the legal risks prior to the placement.

[W:] X. “Permanency plan” means a plan of intervention for the permanent placement of a child, as defined under the Adoption and Safe Families Act.

[X:] Y. “Placement” means the point in time when the child is placed in the foster or adoptive home by a legal custodian or guardian.

[Y:] Z. “Post placement” means the period of time between the placement of a child in an adoptive home and the issuance of a decree signed by a judge ordering the adoption.

[Z:] AA. “Post-adoption” means any time following the entry of an adoption decree by the court.

[AA:] BB. “Presumed father” means, pursuant to the Adoption Act, 32A-5-3 (V) NMSA 1978, the husband of the biological mother at the time the adoptee was born; and individual who was married to the mother and either the adoptee was born during the term of the marriage or the adoptee was born within three hundred (300) days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or before the adoptee’s birth, an individual who attempted to marry the adoptee’s biological mother by a marriage solemnized in apparent compliance with the law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(1) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration or invalidity or divorce; or

(2) is invalid without a court

order, the adoptee was born within three hundred (300) days after the termination of cohabitation.

[BB:] CC. “Protective services division (PSD)” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

[CC:] DD. “Service provider” means anyone, agency or individual, providing a service to an individual or client.

[DD:] EE. “Substantial compliance” means all licensing standards have been complied with and that only minor deficiencies exist which do not impair the safety, permanency or well being of a child in the agency’s care and that the agency is in compliance with New Mexico Children’s Code, the New Mexico Adoption Act and regulations, the Indian Child Welfare Act, the Adoption and Safe Families Act, the Interstate Compact on Placement of Children, the Interstate Compact on Adoption and Medical Assistance, the Multi-Ethnic Placement Act, the Interstate Ethnic Placement Act, the Uniform Child Custody Act, the Health Information Portability and Accountability Act, the Adam Walsh Child Protection and Safety Act, the Safe and Timely Interstate Placement of Foster Children Act, and the Fostering Connections for Success and Increased Adoptions Act.

[EE:] FF. “Variance” means to refrain from enforcing compliance with a portion of these regulations for an unlimited period of time provided the health and safety of children, families, or staff is not compromised. Variances are issued, in writing, at the sole discretion of PSD.

[FF:] GG. “Waiver” means to refrain from enforcing compliance with a portion of these regulations for a limited period of time provided the health and safety of children, families, or staff is not compromised. Waivers are issued in writing at the sole discretion of PSD.]

GG. “Wide scale emergency” means a natural disaster (e.g., floods, wild fires, pandemic diseases) or human-caused disaster, whether intentional or accidental (e.g., acts of terrorism, transportation accidents, explosions). A wide scale emergency affects the entire community, with consequences that surpass the community’s resources to respond, and typically, although not necessarily, results in a local, state, or national declaration of emergency.

[8.26.5.7 NMAC - Rp, 8.27.6.7 NMAC, 5/29/09; A, 3/31/10]

8.26.5.14 APPEAL RIGHTS:

A. In accordance with the act, PSD may deny, revoke, suspend, place on probation or refuse to renew the license of any child placement agency when the

requirements for licensing are not met or the applicant has a history of license revocation, suspension, denial, penalties or other corrective action based upon complaints substantiated by a state agency responsible for regulation and licensing or by a court of competent jurisdiction in any state where the agency has operated.

B. The holder of the child placement agency license that is denied, revoked, suspended, placed on probation or that is not renewed shall be given written notice by return receipt mail of the proposed action and the reason therefore and shall, at a date and place to be specified in the notice, be given a hearing before a hearing officer appointed by the CYFD secretary with an opportunity to produce testimony in the holder’s behalf and to be assisted by counsel. The hearing shall be held no earlier than twenty (20) days after receipt of notice thereof unless the time limitations are waived. An agency whose license [that] has been denied, revoked, suspended, placed on probation or not renewed may [~~on application to PSD;~~] petition PSD to have the license issued, reinstated or reissued upon proof that the noncompliance with the rules have ceased.

C. An agency adversely affected by a PSD decision denying, revoking, suspending, placing on probation or refusing to renew a license may obtain a judicial review by appealing to the district court pursuant to the provisions of 39-3-1.1 NMSA 1978.

[8.26.5.14 NMAC - Rp, 8.27.6.20 NMAC, 5/29/09; A, 3/31/10]

8.26.5.15 A G E N C Y OPERATIONS:

A. Agency protocol: It is the responsibility of each agency to be aware of and conform to the following:

(1) New Mexico Children’s Code, Chapter 32A, NMSA 1978;

(2) New Mexico Adoption Act, 32A-5-1, NMSA 1978;

(3) Adoption Act Regulations, 8.26.3 NMAC;

(4) Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11 NMAC (for treatment foster care agencies);

(5) Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C 1901 et seq.);

(6) Adoption and Safe Families Act of 1997 (ASFA), P.L. 105-89;

(7) Interstate Compact on the Placement of Children (ICPC);

(8) Interstate Compact on Adoption and Medical Assistance (ICAMA);

(9) Multi-Ethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Adoption Provisions of 1996;

~~(10) Health Information Portability and Accountability Act (HIPAA);~~

~~(H)~~ (10) Adam Walsh Child Protection and Safety Act of 2006;

~~(I)~~ (11) Safe and Timely Interstate Placement of Foster Children Act of 2006; and

~~(J)~~ (12) Fostering Connection for Success and Increasing Adoptions Act of 2008.

B. Ethical operations:

The agency operates in an ethical manner and according to any standards a relevant licensing board promulgates, including, but not limited to the following:

(1) Favoritism: The licensed child placement agency determines if the governing board, staff and consultants are favored when applying for or receiving the services of the agency. If placement is made with a staff member or board member or consultant, the pre-placement study is conducted by an unrelated licensed placement agency or private person meeting the qualifications set forth in the Adoption Act Regulations, Subsection D and E of 8.26.3.17 NMAC.

(2) Referral compensation: An agency neither receives nor provides referral fees or other forms of consideration from or to another provider of services.

(3) Conflict of interest: An agency prohibits its staff, consultants and governing board members to provide private practice services to its applicants, clients or their families. PSD may review restrictions and suspend the applicability of this restriction if the services were in place sixty (60) days prior to the date of application or intake and the record reflects a finding that it is in the best interest of the individual and why it is in their best interest to maintain the professional relationship. No one may provide foster care services or adopt a child for whom he or she has any case management responsibility.

(4) Gifts: Gifts may not be given or received between or among clients, staff and agencies that exceed fifty (50) dollars.

(5) Discrimination: Agencies who receive state or federal monies shall not discriminate against applicants, clients, or employees based on race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity.

[8.26.5.15 NMAC - Rp, 8.27.6.12 NMAC, 5/29/09; A, 3/31/10]

8.26.5.29 PSD ROLE:

A. Meetings and training:

PSD retains the right to call meetings or training for licensed adoption and foster care agencies. Agencies shall be responsible for obtaining all information distributed at each meeting regardless of whether or not they attend the meeting.

B. Access to agency information: Information regarding the

operations of PSD licensed agencies shall be available to other state departments and divisions upon receipt of a written request to the extent permitted by New Mexico law.

C. Oversight and

investigation authority: PSD may conduct inspections and interviews related to referrals of abuse and neglect, licensing violations, or complaints received by PSD related to the operation of the agency. Such inspections and interviews may be conducted at any time, with or without prior notice. In order to evaluate the safety and continuity of care for children placed with the agency, PSD may:

(1) enter and inspect the agency's or applicant's offices and physical facilities;

(2) inspect and copy all agency financial records, files, papers, and correspondence which pertain directly or indirectly to the issuance and maintenance of the license and the issuance and maintenance of foster home licenses or adoption certificates; and

(3) interview, as PSD deems appropriate, agency staff, consultants, contractors, foster parents, adoptive parents, governing body, and any other agency personnel, volunteers and clients.

D. Investigations of abuse and neglect referrals in foster homes:

(1) PSD shall investigate all screened-in reports of allegations of abuse or neglect regarding children in accordance with CYFD protective services investigation policy and procedure. If a screened-out report involves a child in PSD custody, the child's worker shall conduct a safety assessment of the placement.

(2) No new placement may be made in the home during a pending investigation. Existing placements in the home shall be evaluated for safety, with a decision for maintaining the placement depending on the continued safety of a child.

(3) The agency shall notify PSD's foster care and adoption bureau of any abuse and neglect report regarding a foster home, therapeutic foster home, or pre-adoptive home licensed by a child placement agency, regardless of the screening decision. The agency shall also notify CYFD's licensing and certification unit of any abuse and neglect report regarding a therapeutic foster home licensed by an agency, regardless of the screening decision.

E. Investigations of complaints and alleged policy violations:

PSD investigates complaints and alleged violations of agency policy or procedures or CYFD licensing regulations. Allegations of abuse and neglect regarding agency staff are considered alleged policy violations.

(1) Absent an emergency, PSD shall provide an agency notice of a complaint of an alleged agency policy or procedure, or CYFD licensing regulation violation within ten (10) working days from receipt of the

complaint or allegation.

(2) Depending on the type and severity of the allegations, PSD may investigate the agency. The investigation may result in no action being taken, the imposition of sanctions, the suspension of an agency's license, or closure of the agency.

(3) PSD shall maintain a listing of the complaints, notification to the agency, and the findings of PSD's investigation in each agency's file. PSD and the agency shall maintain confidentiality regarding the identity of specific individuals who make complaints and any children and foster or adoptive families involved.

F. Disclosure of complaint information:

(1) Third parties considering obtaining services through a licensed agency may, upon written request, obtain from PSD the number of and calendar year of the complaints and substantiated allegations regarding the agency.

(2) The identity of the complainant shall not be publically released and shall be protected from disclosure to the extent permitted by law.

(3) Client identifying information is confidential and shall be protected as described herein at Subsection E of 8.26.5.26 NMAC.

~~[G. Sanctions: PSD may impose sanctions if it determines that an agency has violated its policies or procedures or any applicable CYFD licensing regulations where an investigation substantiates a complaint against the agency. At PSD's discretion, depending upon the severity of an agency's non-compliance, any of the following actions may be taken:~~

~~(1) When there are no safety issues involving children:~~

~~(a) Letter of correction: PSD licensing staff may send a letter notifying the agency of the identified deficiencies and instructing the agency to correct the deficiencies by a specific date. The letter of correction shall advise the agency of potential PSD actions should the deficiencies not be corrected, including probation, suspension or revocation of license, or denial of license renewal. If appropriate, the agency shall submit a written corrective action plan, which addresses the deficiencies and follows the time frame provided by PSD. At its discretion, PSD staff may work with the program in the development or revision of the corrective action plan.~~

~~(b) Probation with restricted admissions: In addition to requiring a corrective action plan, PSD may restrict the program from accepting any new clients or expanding into additional services until the identified deficiencies are corrected. PSD shall notify a licensee, in writing, when it intends to sanction the agency by placing the agency on probation with restricted~~

admissions. Notice of probation is sent by registered mail to the address on file. The notice states the deficiencies and reasons for the probation and informs the applicant of the appeal process as described herein at 8.26.5.14:

— (2) When safety issues for children exist:

— (a) Denial of license renewal or revocation of agency license: PSD may revoke a license or deny renewal of a license based upon deficiencies related to one or all of the following:

— (i) abuse, neglect or sexual exploitation of a child pursuant to the New Mexico Children's Code, 32A-4-2(B); (E) (G) and (H), NMSA 1978;

— (ii) presence or history of health and safety deficiencies as documented by CYFD in current or previous on-site visits;

— (iii) presence or history of license revocation, suspension or denial, penalties or other similar corrective actions taken by a regulatory body or court of competent jurisdiction in New Mexico or other state;

— (iv) noncompliance with state, county and municipality health and safety regulations;

— (v) records which are out of compliance with the prescribed record content or deficiencies that were present in the last review and have not been corrected.

— (3) Suspension, denial of renewal or revocation of license: PSD may suspend or revoke an agency's license as detailed above and if, at any time during the license period, a licensee fails to meet or maintain the licensing requirements or fails to provide information requested by PSD. PSD shall notify a licensee, in writing, of its intent to suspend or revoke a license. Notice shall be served by certified mail, delivered to the address on file, or by personal delivery to the person authorized to accept service on behalf of the agency, at least ten (10) working days prior to suspension or revocation. The notice shall state the reasons for the action, its effective date, and inform the licensee of the appeal process as described herein at 8.26.5.14 NMAC:

— (4) Agency responsibility: When PSD suspends or revokes an agency's license for any reason; the agency shall assist PSD in arranging for care, custody and control of any children currently being served, and for the preservation and transfer of records. The agency shall assist in the transfer of a licensed home in good standing to another agency when such would be in the best interests of the children to be placed in a different home.]

G. Sanctions: PSD may impose sanctions, among other reasons, if it determines that an agency has failed to meet licensing requirements or has violated any

of the standards included herein, or where an investigation substantiates a complaint against such agency, employees or licensed homes. At PSD's discretion, depending upon the severity of an agency's non-compliance, PSD may issue a letter of correction, put an agency on probation with restricted admissions, suspend an agency's license, revoke an agency's license, or deny an agency's license.

(1) Letter of correction: PSD may send the agency a letter of correction. The letter of correction is sent by registered mail and:

(a) notifies the agency of identified deficiencies and instructs the agency to correct the deficiencies by a specific date;

(b) requires the agency to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD. At its discretion, PSD staff may work with the agency in the development or revision of the corrective action plan; and

(c) advises the agency of potential PSD actions should the deficiencies not be corrected, including, but not limited to probation, suspension or revocation of license, or denial of license renewal.

(2) Probation with restricted admissions: PSD may place the agency on probation and restrict the agency from accepting any new clients or expanding into additional services until the identified deficiencies are corrected. PSD shall notify the agency in writing, as specified Paragraph (5) of Subsection G of 8.26.5.29 NMAC (notification) below. The notice shall:

(a) state the deficiencies and reasons for the probation and instruct the agency to correct the deficiencies by a specific date;

(b) require the agency to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD; at its discretion, PSD staff may work with the agency in the development or revision of the corrective action plan;

(c) advise the agency of potential PSD actions should the deficiencies not be corrected, including, but not limited to suspension or revocation of license or denial of license renewal; and

(d) inform the licensee of the appeal process as described herein at 8.26.5.14 NMAC.

(3) Suspension of license: PSD may suspend the agency's license and move the children placed by the agency to new placements.

(a) When PSD suspends an agency's license, the agency shall assist PSD

in arranging for transfer of care, custody and control of any children currently being served, and for the preservation and transfer of records. The agency shall assist in the transfer of its licensed homes in good standing to another agency when such would be in the best interests of the children.

(b) PSD shall notify the agency in writing of its intent to suspend the agency's license, as specified in Paragraph (5) of Subsection G of 8.26.5.29 NMAC (notification) below. The notice shall:

(i) state the deficiencies and reasons for the suspension and instruct the agency to correct the deficiencies by a specific date;

(ii) require the agency to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD; at its discretion, PSD staff may work with the agency in the development or revision of the corrective action plan;

(iii) advise the agency of potential PSD actions should the deficiencies not be corrected, including, but not limited to revocation of license or denial of license renewal; and

(iv) inform the licensee of the appeal process as described herein at 8.26.5.14 NMAC.

(4) Revocation of agency's license or denial of license renewal: PSD may revoke an agency's license or deny renewal of the license if PSD determines such action is necessary based upon the agency's failure to meet licensing requirements and non-compliance with any of the standards included herein or the agency's failure to correct deficiencies identified in a prior letter of correction, probation, or suspension of license.

(a) When PSD revokes or denies renewal of an agency's license, the agency shall assist PSD in arranging for the transfer of care, custody and control of any children currently being served, and for the preservation and transfer of records. The agency shall assist in the transfer its licensed homes in good standing to another agency when such would be in the best interests of the children to be placed in a different home.

(b) PSD shall notify the agency in writing, as specified in Paragraph (5) of Subsection G of 8.26.5.29 NMAC (notification) below.

(5) Notification: PSD shall notify the agency in writing of its intent to put the agency on probation or to suspend, revoke, or not renew the agency's license. Notice shall be sent by return receipt mail, delivered to the address on file, or by personal delivery to the person authorized to accept service on behalf of the agency. Except as specified in Paragraph (6) of Subsection G of 8.26.5.29

NMAC (emergency suspension) below, notice shall be sent at least thirty (30) days prior to the probation, suspension, or revocation of the license or of the expiration date of a license which shall not be renewed. The notice shall state the reasons for the action and its effective date, and inform the licensee of the appeal process as described herein at 8.26.5.14 NMAC.

(6) Emergency suspension: PSD may immediately suspend an agency's license, prior to a hearing on the matter, when such action is required to protect human health and safety. The emergency suspension is carried out by personal service of an emergency suspension notice. The agency may request, in writing, a hearing with five (5) working days of the suspension in accordance with Subsection A of 8.8.4.10 NMAC, thereby waiving the normal twenty (20) day time limits for hearings established in Subsection B of 8.26.5.14 NMAC. [8.26.5.29 NMAC - Rp, 8.27.6.18 NMAC, 5/29/09; A, 3/31/10]

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 4 FISHERIES

19.31.4.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.4.1 NMAC - Rp, 19.31.4.1 NMAC, 4-1-2010]

19.31.4.2 SCOPE: Sportfishing. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 through 34 of Title 19.
[19.31.4.2 NMAC - Rp, 19.31.4.2 NMAC, 4-1-2010]

**19.31.4.3 S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26, and 17-2-1 NMSA 1978, provide that the New Mexico state 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 species.
[19.31.4.3 NMAC - Rp, 19.31.4.3 NMAC, 4-1-2010]

19.31.4.4 DURATION: April 1, 2010 through March 31, 2014.
[19.31.4.4 NMAC - Rp, 19.31.4.4 NMAC, 4-1-2010]

19.31.4.5 EFFECTIVE DATE:
April 1, 2010, unless a later date is cited at the end of individual sections.
[19.31.4.5 NMAC - Rp, 19.31.4.5 NMAC,

4-1-2010]

19.31.4.6 O B J E C T I V E :
Establishing open seasons, bag limits, and other rules pertaining to management and harvest of the fisheries resources of New Mexico.
[19.31.4.6 NMAC - Rp, 19.31.4.6 NMAC, 4-1-2010]

19.31.4.7 D E F I N I T I O N S :
Specific terms as used in this regulation are defined.

A. Boundary descriptions

(1) "U.S.," as used in boundary descriptions herein, shall mean United States highway.

(2) "N.M.," as used in boundary descriptions herein, shall mean New Mexico state road.

(3) "I," as used in boundary descriptions herein, shall mean interstate highway.

B. "Daylight hours" shall mean from one-half hour before sunrise to sunset.

C. A "barbless" lure or fly shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto a hook to resemble or simulate insects, bait fish, or other foods. A fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

D. "Chum" as used herein, is organic material that is not injurious to aquatic life and is used to attract fish.

E. "Snagging" as used herein, is the intentional taking of fish with hooks, gang hooks, or similar devices where the fish is hooked in a part of the body other than the mouth.

F. "Bait fish" is defined as those nongame fish which are not otherwise protected by statute or regulation.

G. "Angling" shall mean taking or attempting to take fish by hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.
[19.31.4.7 NMAC - Rp, 19.31.4.7 NMAC, 4-1-2010]

19.31.4.8 TROUT WATERS AND WARM WATERS:

A. Regular trout waters:
The following are designated as regular trout waters: All streams, lakes and ponds lying within the following described areas except licensed class A lakes and lakes, ponds, and ranch tanks not fed by public waters and not open to public fishing.

(1) Northern area: That portion of New Mexico bounded by a line starting at the intersection of I-25 with the Colorado-New Mexico state line and running south along I-25 to its junction with U.S. 64; thence, south and west on U.S. 64 to its junction with N.M. 58 at Cimarron; thence, south and east on N.M. 21 to its junction with I-25; thence, south, west, and southwest on I-25 and U.S. 84-85 to its junction with U.S. 285-84 at Santa Fe; thence, north on U.S. 285-84 to its intersection with N.M. 502; thence, west on N.M. 502 to the west bank of the Rio Grande; thence, southwesterly along the west bank of the Rio Grande to its intersection with N.M. 44 at Bernalillo; thence, north and west on N.M. 44 to its intersection with U.S. 550; thence, west on U.S. 550 to the west bank of the Animas river; thence, north along the west bank of the Animas river to the Colorado-New Mexico state line; thence, east along the state line to its intersection with I-25. (Except the San Juan river from U.S. 64 bridge at Blanco downstream to N.M. 44 bridge at Bloomfield.)

(2) Ruidoso area: That portion of New Mexico bounded by a line starting at the junction of U.S. 54 and N.M. 506 and running north on U.S. 54 to its intersection with U.S. 380 at Carrizozo; thence, east on U.S. 380 to its junction with N.M. 246 at Capitan; thence, north and east on N.M. 246 to the eastern boundary of the Lincoln national forest; thence, south to Tinnie; thence, west on U.S. 380 to Hondo; thence, south on a north-south line to the junction of N.M. 24 and U.S. 82 north of Dunken; thence south and west on N.M. 24 to Piñon; thence, south approximately one mile to N.M. 506; thence, west along N.M. 506 to its junction with U.S. 54 at Paxton.

(3) Gila area: That portion of New Mexico bounded by a line starting at the junction of U.S. 180 with the Arizona-New Mexico state line and running north along the state line to its intersection with U.S. 60; thence, east on U.S. 60 to its junction with N.M. 52 west of Magdalena; thence, south on N.M. 52 to Winston and west along the road to Chloride and the eastern boundary of the Gila national forest; thence, south along the forest boundary to its intersection with N.M. 152 east of Kingston; thence, west on N.M. 152 to its junction with U.S. 180 at Central; thence, west and northwest on U.S. 180 to its junction with the Arizona-New Mexico state line. (Except Bear canyon lake.)

(4) in Sandoval county: all of Las Huertas (Ellis creek);

(5) in San Juan county: the Animas river from the 550 highway bridge in the city of Aztec and downstream to its confluence with the San Juan river;

(6) in Torrance county: all of Tajique creek;

(7) in Union county: all of Dry

Cimarron;

(8) in Cibola county: Bluewater creek;

(9) Pecos river from I-25 south to the southeast boundary of Villanueva state park;

(10) the following lakes, ponds, and reservoirs: Alice, Bluewater, Blue Hole Park ponds, Chiuilla well, Clayton, lake Farmington, Jackson, Maloya, Maxwell lake 13, McAllister, McGaffey, Power dam, Perch, Manzano, and Ramah.

(11) In Sierra county: Rio Grande from Elephant Butte dam downstream to, and including, Caballo lake.

B. Winter trout waters:

The following are designated as winter trout waters from November 1 through March 31 of the effective years: Sumner lake stilling basin; that portion of the Black river extending from one mile upstream to one mile downstream of Higby hole and located in Sections 8 and 9, T. 24 S., R. 28 E., N.M.P.M., in Eddy county; that portion of the Pecos river from the southeast boundary of Villanueva state park downstream to, but not including Santa Rosa lake; the following drains: Albuquerque, Atrisco, Belen Riverside, Bernalillo, Corrales, Peralta, and Tome; and the following lakes: Bataan, Bear canyon, Bill Evans, Bosque Redondo, Bottomless lakes, Burn, Carlsbad municipal, Carrizozo, Chaparral, Conservancy park/Tingley beach, Escondida, Eunice, Greene Acres, Green Meadow, ponds on Harry McAdams park, Jal, Ned Houk lakes, Oasis park, and Van.

C. Warm waters: "Warm waters", as used herein, shall include all streams, lakes, and ponds except those designated as trout waters above, and except licensed class A lakes.

[19.31.4.8 NMAC - Rp, 19.31.4.8 NMAC, 4-1-2010]

19.31.4.9 SEASON DATES:

A. General seasons: All trout and warm waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:

(1) Special waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister lake, upper and lower Charette lakes, Maxwell lakes 13 and 14, and Clayton lake.

(b) All waters in the Valle Vidal (Vermejo tract of the Carson national forest) shall be open from July 1 through December 31.

(c) Bonito lake shall be open from April 1 through November 30.

(d) Laguna del campo at Los Ojos trout hatchery shall be open from May 1 through October 31.

(e) Red River city ponds shall be

open from March 1 through November 15.

(f) Black canyon creek in Grant county upstream from lower Black canyon campground and Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon shall be open from July 1 through October 31.

(2) Waters on national wildlife refuges waters on U. S. national wildlife refuges shall be open for the taking of game fish in accordance with regulations of the U. S. fish and wildlife service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the fish and wildlife service has not regulated season dates.

B. Special Kokanee salmon seasons, dates, and location

(1) The following waters shall be open October 1 through December 31 for the special kokanee salmon season: Abiquiu reservoir, Chama river from El Vado lake upstream to the west boundary of the Rio Chama wildlife and fishing area, Eagle Nest lake, El Vado lake, and Navajo lake including the Pine river.

(2) Heron lake shall be open for the special Kokanee salmon season from the second Friday in November through December 31.

(3) Heron lake, including the Willow creek tributary, and the Pine river shall be closed to Kokanee salmon fishing between October 1 and the second Thursday of November.

[19.31.4.9 NMAC - Rp, 19.31.4.9 NMAC, 4-1-2010]

19.31.4.10 HOURS OF FISHING:

A. Day and night fishing

for all species of game fish shall be permitted in all waters during the open season, except Alto, Bonito, Butler street, and Eagle Nest lake where fish may be taken or fished for only between the hours of 5 a.m. and 10 p.m.; and U. S. fish and wildlife service waterfowl refuges where fish may be taken or fished for only during the hours posted at the refuge.

B. Laguna del campo located at Los Ojos trout hatchery, Red River hatchery pond at the Red River state fish hatchery, Glenwood pond at the Glenwood state fish hatchery, waters within the Valle Vidal portion of the Carson national forest, and Maddox lake shall be during **daylight hours only**.

C. Fishing at Ned Houk park lakes and Greene Acres shall be during the **hours posted** by the city of Clovis; fishing at Santa Cruz lake shall be between the **hours of 6 a.m. and 10 p.m.**

D. Fishing at Conservancy park/Tingley beach shall be only between sunrise and sunset.

[19.31.4.10 NMAC - Rp, 19.31.4.10 NMAC,

4-1-2010]

19.31.4.11 DAILY BAG, POSSESSION LIMITS AND REQUIREMENTS OR CONDITIONS:

A. Trout

(1) Waters with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, Gila, lake, Brook trout and Kokanee salmon:

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession, unless otherwise specified in special trout waters, Paragraph (4) of Subsection A of 19.31.4.11 NMAC.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A of 19.31.4.11 NMAC (above).

(c) The daily bag limit for lake trout shall be 2 trout and no more than 4 lake trout shall be in possession.

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through the second Thursday of November).

(4) Special trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; in Colfax county: the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1 mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 0.2 miles below the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Rio

Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream. In Catron county: Iron creek in the Gila wilderness upstream of the constructed waterfall barrier located in T12SR17WSec16NE. Every person angling for fish on this portion of Iron creek must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(b) On those sections of the following waters every person must comply with any special requirements listed and no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 3.75 miles to the east side of section 16; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to McKinney Pond; In Sandoval county: a posted portion of the San Antonio river from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Sandoval county, Capulin creek from its confluence with the Rio Grande to the headwaters, In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal except Leandro creek (Vermejo tract - Carson national forest); In Grant and Catron counties; Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon. Every person angling for fish on these portions of Mogollon creek must be in possession of a Gila trout permit, issued in their name by

the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

(c) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

(d) At Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only and the remaining two ponds shall have daily bag limits of 4 trout with no more than 4 trout in possession.

(e) On those sections of the following waters the daily bag limit shall be 3 trout and no more than 3 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached. Any legal angling gear and legal bait for trout waters may be used. In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge; In Taos county: goose lake; In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande; In Taos county: the designated fishing pond at Red River state fish hatchery; In Taos county: the Red River city ponds; In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu; In Rio Arriba county: Laguna del campo at Los Ojos trout hatchery; In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake; In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(f) On those sections of the following waters no cutthroat trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: In Sandoval county: the Rio Cebolla from McKinney pond to the headwaters; In Taos county: upper Cabresto creek and its tributaries from Cabresto canyon upstream to the headwaters; In Colfax county: the Vermejo river and its tributaries from the Vermejo Park ranch boundary to the headwaters; and in Colfax county: public portions of Leandro creek.

(g) On those sections of the following waters the daily bag limit shall be 2 Gila trout and no more than 2 Gila trout in possession, and the bag limit and possession limit for brown trout is unlimited. Anglers must stop fishing in those waters when the

daily bag limit is reached. Any legal angling gear and legal bait for trout waters must be used. In Catron county: waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks.

(h) On those sections of the following waters no Gila trout may be kept or held in possession and the bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited: in Grant county, Black canyon from the forest road 150 (North Star Mesa road) crossing to the headwaters. Every person angling for fish on these portions of Black canyon must be in possession of a Gila trout permit, issued in their name by the department or its designee. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

B. Warm-water fishes:

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass 2 fish;
- (2) largemouth, smallmouth, and spotted bass 5 fish;
- (3) walleye 5 fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) all other warm-water game species 20 fish.

C. The following exception shall apply:

(1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; Estancia Park lake (Torrance county); Corona lake (Lincoln county); Grants city pond (Cibola county); and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, the limit for tiger muskie (*Esox lucius x E. masquinongy*) shall be one fish over forty (40) inches in length and the possession limit shall be equal to the daily bag limit.

(4) In Eddy county, the Pecos river

beginning at the north boundary of Brantley wildlife management area to Brantley reservoir dam including Brantley reservoir, all fish caught must immediately be released, except during official fishing tournaments during which fish may be held in a live well until they are weighed and measured, on site, and then immediately released back into the lake.

[19.31.4.11 NMAC - Rp, 19.31.4.11 NMAC, 4-1-2010]

19.31.4.12 SIZE LIMITS:

A. Salmonids

(1) On Shuree lakes, on the Valle Vidal tract, any trout taken that are less than 15 inches long shall be immediately returned to the water.

(2) In Colfax county, a posted portion of the Cimarron river where only barbless lures or flies may be used (and more specifically described in Subsection A of 19.31.4.11 NMAC above), any trout taken that are less than 16 inches long shall be immediately returned to the water.

(3) [Reserved]

(4) Any trout taken that are less than 12 inches long shall be immediately returned to the water in the following locations:

(a) In San Miguel county: a posted portion of the Pecos river where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(b) In Lincoln county: a posted section of the Rio Ruidoso where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(c) In Taos county: a posted section of the Red River from the confluence with Goose creek 1 mile upstream.

B. Black basses

(1) Any largemouth or spotted bass taken which is less than 14" long shall be immediately returned to the water.

(2) Any smallmouth bass taken which is less than 12" long shall be immediately returned to the water except at Ute and Conchas reservoirs where any smallmouth bass taken which is less than 14" long shall be immediately returned to the water.

C. Walleye: Any walleye taken which are less than 14" long shall be immediately returned to the water.
[19.31.4.12 NMAC - Rp, 19.31.4.12 NMAC, 4-1-2010]

19.31.4.13 [RESERVED]

19.31.4.14 WATERS WITH AGE OR HANDICAPPED USE RESTRICTIONS:

A. Only persons under 12 years of age may fish in the following

waters: Shuree kids' ponds on Valle Vidal (Vermejo tract-Carson national forest); valley improvement association ponds at Belen, Young pond in Las Cruces, Harris pond in Las Vegas, Spring river park in Roswell, and the Brood pond at Seven Springs state fish hatchery.

B. Only persons under 12 years of age, those 65 years and over, and handicapped persons may fish in the designated Red River hatchery pond located at the Red River state fish hatchery, Blue Hole park pond (formerly Santa Rosa seniors pond), Estancia park lake at Estancia, and in ponds located in Harry McAdams park.

C. Only handicapped persons and those under 12 years of age may fish in the posted small pond at Cowles.

D. Olympic pond: Only persons under 12 years of age and those 65 years and over may fish in Olympic pond located at Angel Fire.

E. Laguna del campo: Only persons 14 years of age and under, those 65 years and over, handicap persons, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Laguna del campo located near Los Ojos trout hatchery.

F. Conservancy park/Tingley beach kids' pond: Only persons 12 years of age and under may fish in Conservancy park/Tingley beach kids' pond in Albuquerque.

G. Red River city middle kids' pond: Only handicapped persons and those 12 years of age and under may fish in Red River city middle kids' pond.

H. Grants city pond: Only persons under 17 years of age, those 65 years and over, and handicapped persons may fish in Grants City Pond in Grants.
[19.31.4.14 NMAC - Rp, 19.31.4.14 NMAC, 4-1-2010]

19.31.4.15 [RESERVED]

19.31.4.16 CLOSED WATERS:

A. Waters closed to fishing

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.

(2) In Catron county: Little creek from the "barrier" upstream through all tributaries.

(3) In Catron county: Spruce creek.

(4) In Catron and Sierra counties: Main Diamond creek above the point of confluence with east fork of Diamond creek and the south Diamond creek drainage.

(5) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry.

(6) In Colfax county: a posted

area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(7) In Grant county: east fork of Mogollon creek upstream of Trail canyon including Woodrow canyon.

(8) In Grant county: McKnight creek.

(9) In Grant county: Sheep corral creek.

(10) In Lincoln county: Pinelodge creek and posted areas of Alto reservoir and Bonito lake near the outlets.

(11) In Catron county: White creek from waterfall near White creek cabin upstream to headwaters.

(12) In Catron county: West fork of the Gila river and all tributaries above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Lilley canyon.

B. Taking fish from hatchery waters: No person shall take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs state fish hatchery, and Laguna del campo at Los Ojos state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

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

[19.31.4.16 NMAC - Rp, 19.31.4.16 NMAC, 4-1-2010]

19.31.4.17 [RESERVED]

19.31.4.18 ESTABLISHING

FREE FISHING DAYS: The first Saturday in June and the last Saturday in September during the effective dates of this regulation, are established as free fishing days whereby anglers may fish public waters in New Mexico as otherwise provided by regulation, but without benefit of a fishing license or habitat improvement stamp.

[19.31.4.18 NMAC - Rp, 19.31.4.18 NMAC, 4-1-2010]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.10 NMAC, Sections 9 and 10, effective 3-31-2010.

19.30.10.9 REPORTING REQUIREMENTS FOR LICENSED OR PERMITTED TRAPPERS AND FURBEARER HUNTERS:

A. All licensed or permitted trappers and furbearer hunters must report the results of their hunting or trapping activities no later than April 7 annually for licenses held in the previous license year.

B. The department shall provide each trapper and furbearer hunter with a toll-free telephone number and a website address that can be accessed to provide reports of hunting or trapping activities.

C. Licensed or permitted trappers and furbearer hunters who fail to report the results of their hunting or trapping activities by April 7 with shall be ineligible to purchase a trapper license the following year until the requirements of 19.30.10.10 NMAC are fulfilled and shall have any special entry hunt application with an application deadline later than April 7, any population reduction authorization, and any private land authorization[;] submitted for the following license year[;] rejected.

D. Individuals licensed or permitted to trap or hunt furbearers, but not engaging in any hunting or trapping activity, must still submit a report.

E. Upon submission of the hunting or trapping report, the department shall issue the hunter or trapper a confirmation code validating a fulfillment of the reporting requirement. Inclusion of a confirmation code for each license or permit subject to the reporting requirement on an application for any special entry hunt with an application deadline later than April 7, any population reduction authorization and any private land authorization submitted for the following license year will be required for the application to be considered.

[19.30.10.9 NMAC, 9-1-2006; A, 9-15-2008; A, 3-31-2010]

19.30.10.10 L A T E FULLFILLMENT OF REPORTING REQUIREMENT:

A. Licensed or permitted deer and elk hunters and trapper license holders who fail to report the results of their hunting or trapping activities by specified deadlines may submit their hunting or trapping report late with payment of a fee specified by the department not to exceed \$20 for each late report. Late reporting must

occur prior to the annual specified deadline for any special entry hunt applications or the purchase of a trapper license.

B. Elk hunters licensed pursuant to conversion of a landowner elk authorization who fail to report the results of their hunting activities by specified deadlines may submit their hunting or trapping report late with payment of a fee specified by the department not to exceed \$20 for each late report. Late reporting must occur prior to the annual specified deadline for any special entry hunt applications including the conversion of any landowner authorization to a license.

[19.30.10.10 NMAC - N, 9-1-2006; A, 9-15-2008; A, 3-31-2010]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.3 NMAC, Sections 2, 6 and 8, effective 3-31-2010.

19.31.3.2 SCOPE: Sportspersons interested in hunting and trapping and management of big game and furbearers in New Mexico. Additional requirements may be found in Chapter 17 NMSA and other Parts of Title 19, Chapter 31.

[19.31.3.2 NMAC - Rp, 19.31.3.2 NMAC, 12-30-04; A, 3-16-09; A, 3-31-10]

19.31.3.6 OBJECTIVE: Basic regulation, rules and procedures governing the issuance of special permits and licenses issued by the department pertaining to deer, elk, pronghorn antelope, turkey, oryx, ibex, javelina, furbearer, and other species determined by the state game commission.

[19.31.3.6 NMAC - Rp, 19.31.3.6 NMAC, 12-30-04; A, 3-31-10]

19.31.3.8 PUBLIC LICENSES AND PERMITS - APPLICATION FOR:

A. Application form: Application for all public licenses and permits shall be made on the standard application form provided by the department of game and fish.

B. Application deadline(s): Applications for all population reduction hunts, turkey, pronghorn antelope, elk, bighorn sheep, bear entry, deer entry, oryx, javelina, and ibex hunts must be received, in the Santa Fe office only, by 5:00 p.m. on dates set by the state game commission.

C. Mailed application deadline: Mailed applications postmarked, but not delivered by the deadline date, will be accepted by the Santa Fe office up to five (5) working days after that deadline.

D. One applicant per

application: No more than one (1) person may apply under each application number for bighorn sheep, bear entry, ibex, population reduction hunts, game management sub-unit 6B (Valles Caldera national preserve), and GMU 5A private land deer.

E. Two applicants per application: No more than two (2) persons may apply under the same application number for turkey and oryx.

F. Four applicants per application: No more than four (4) persons may apply under the same application number for deer entry, elk, pronghorn antelope, and javelina.

G. Resident and non-resident application combination: Any mixture or combination of residents and non-residents may make application for special drawing providing the number of applicants does not exceed the restriction of this section (subsection D, E or F).

H. Applications rejected: Applications for licenses may be rejected by the department if an applicant did not:

(1) apply on the proper form as designated by the director;

(2) submit the correct or required information;

(3) submit the correct license or application fee, and any other required fee;

(4) meet the deadline date;

(5) comply with a current statute or rule, or did not submit valid written landowner permission when specified by rule.

I. More applications than permits: If more applications for public licenses or permits are received than there are licenses or permits available, the available licenses or permits shall be allotted by means of a public drawing.

J. Increase in licenses or permits: The number of licenses or permits available may be increased to accommodate corrections or errors by the department which results in the addition of names to the successful list.

K. Additional choices: Applicants for public licenses may designate additional choices for hunt periods.

L. Application categories: Applications for special drawing hunts will be placed into the appropriate categories, as specified in 17-3-16 NMSA 1978 by department personnel or their designee. Special drawings shall continue to draw applicants from the appropriate drawing pool progressively for each respective hunt code, starting with first choice applicants, then proceeding to second and subsequent choice applicants until the quota has been met or the pool of applicants has been exhausted.

M. Resident and non-resident applications:

(1) A non-resident applicant must have a valid outfitter registration number

on his or her application to be placed in the separate pool designed for guided hunts.

(2) For an application to be successfully drawn, there must be a sufficient number of licenses or permits available for that hunt code to accommodate all applicants from their respective drawing pools.

(3) Any licenses left over from the appropriate drawing pool will be allocated as prescribed in Paragraph C of Section 17-3-16 NMSA 1978 Compilation.

N. New Mexico department game and fish customer identification number: All persons making application to the department for hunt drawings for public licenses and permits and private landowner authorizations shall submit on the application a "New Mexico department of game and fish (NMDGF) customer identification number.

(1) "NMDGF customer identification number" shall be obtained only from the department and must be obtained prior to the submission of any application or private landowner authorization.

(2) Each person making application for public drawing license, permit or private landowner authorization must use their own valid NMDGF customer identification number on his or her application.

(3) Any application received without a valid NMDGF customer identification number or false NMDGF customer number will be rejected.

~~**O. Quality/high demand elk application restriction:** Any person making application for an elk hunt designated as "quality" or "high demand" in 19.31.14 NMAC shall not have received a public draw license for an elk hunt designated as "quality" or "high demand" in the license year prior to the application. Any hunt choices for a public draw elk hunt designated as "quality" or "high demand" on applications submitted by persons holding a public draw "quality" or "high demand" elk license in the prior year will not be honored.~~

~~**P. Quality/high demand deer application restriction:** Any person making application for a deer hunt designated as "quality" or "high demand" in 19.31.13 NMAC shall not have received a public draw license or permit for a deer hunt designated as "quality" or "high demand" in the license year prior to the application. Any hunt choices for a public draw deer hunt designated as "quality" or "high demand" on applications submitted by persons holding a public draw "quality" or "high demand" deer license or permit in the prior year will not be honored.~~

~~**Q. Pronghorn antelope application restriction:** Any person making application for a public draw pronghorn antelope hunt shall not have received a public draw license for a pronghorn antelope in the license year prior to the application.~~

~~Applications submitted by persons holding a public draw pronghorn antelope license in the prior year will be rejected.]~~

O. Trapper license restriction: The number of trapper licenses shall be unlimited and available only through department offices or the department's web site.

[19.31.3.8 NMAC - Rp, 19.31.3.8 NMAC, 12-30-04; A, 4-1-07; A, 3-16-09; A, 3-31-10]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.10 NMAC, Section 14, effective April 1, 2010.

19.31.10.14 FISHING:

A. Angling: Game fish may be taken by angling in all waters that are open for fishing.

B. Trotlines:

(1) It is unlawful for any person to set more than one trotline at a time. It is unlawful to tie or join together trotlines belonging to two or more persons.

(2) It is unlawful for trotlines to have more than 25 angling hooks.

(3) A person fishing with a trotline shall personally visit and inspect the trotline at least once every 24 hours. Failure to check a trotline every 24 hours is a violation of this paragraph.

(4) It is unlawful for anyone to tamper with another's trotline.

(5) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the fisherman's name, address, fishing license number, and the date the trotline was set. An unlicensed fisherman under 12 years of age shall also list his date of birth.

(6) It is unlawful to set or use a trotline in trout waters, with the following exceptions: Abiquiu lake, Chama river downstream from the northern boundary of the Monastery of Christ in the desert, Gila river downstream from its junction with its east fork, Navajo Lake and the Rio Grande downstream from its junction with the Chama river.

(7) Any conservation officer or other officer authorized to enforce the game laws may seize and confiscate any trotlines not set in accordance with this subsection.

C. Illegal device or substance: It is unlawful to use any device or substance capable of catching, stupefying, or killing fish except as permitted by regulation.

D. Bait: It is unlawful to use protected fish, live bullfrogs, or live bullfrog tadpoles as bait in any waters

containing protected species. EXCEPTION: the genus *Lepomis* taken by legal means of angling may be used as live bait in the water from which they were taken only in the following waters: Abiquiu reservoir, Cochiti lake, Elephant Butte reservoir, Caballo reservoir, Stubblefield lake, Maxwell lakes, Clayton lake, Conchas lake, Ute lake, Santa Rosa lake, Lake Sumner, Brantley reservoir, and Navajo reservoir. *Lepomis* may be used as cut bait; roe, viscera, and eyes of legally taken game fish may be used as bait; and bullfrogs and bullfrog tadpoles may be used as cut bait. Live bullfrogs may not be in possession while fishing.

E. Use of bait fish:

(1) It is unlawful to use gar (*Lepisosteus* spp.) and goldfish (*Carassius auratus*) for bait fish in all waters.

(2) It is unlawful to use live common carp (*Cyprinus carpio*), river carpsucker (*Carpoides carpio*), and smallmouth buffalo (*Ictiobus bubalus*) in all waters. However, these species may be used as cut bait in any water where bait may be used.

(3) It is unlawful to use bait fish in all trout waters except fathead minnows and red shiners may be used in the following trout waters: Abiquiu Clayton lake, Jackson lake, lake 13 (Maxwell refuge), Navajo lake, Caballo lake, the Rio Grande downstream of the Taos junction bridge (excluding the special trout water described in 19.31.4.11 NMAC), Power dam lake, and the Animas river.

(4) It is unlawful to use any bait fish in Bitter lake national wildlife refuge and Bottomless lakes state park.

(5) Bait fish may be used in all other waters with the following restrictions:

(a) In the Gila river and San Francisco river drainages only fathead minnows may be used.

(b) In the Pecos river drainage only fathead minnows and red shiners may be used.

(c) In the Rio Grande drainage only fathead minnows, red shiners, and shad may be used except in Elephant Butte and Caballo where golden shiners are also allowed.

(d) In the Canadian river drainage only fathead minnows, red shiners, and shad may be used.

(e) In the San Juan river drainage only fathead minnows and red shiners may be used.

F. Release of bait fish: It is unlawful to release any bait fish into any water containing game fish.

G. Eradication of fish: In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers, the director may permit licensed fishermen and unlicensed persons under 12 years of age to take and possess

game fish in numbers exceeding current bag and possession limits. In granting such permission, the director may specify bag and possession limits and manner and method of taking for such waters.

H. Bait fish for personal use: Licensed fishermen and unlicensed persons under 12 years of age may take minnows and nongame fish for personal use only. They may use angling, nets, traps, and seines. All protected species of fish taken in seines, nets, and traps shall be immediately returned to the water.

I. Illegal taking of bait fish: It is unlawful for licensed minnow dealers to take bait fish for sale from waters not specified on their licenses. They may take these fish only by use of traps, seines, [and/or] or cast nets, as specified on their licenses. All protected species of fish taken in such traps, seines, or nets shall be immediately returned to the water from which they were taken.

J. Methods for taking bait fish: Bait fish may be taken in waters containing game fish by angling, spears, and arrows.

K. Permits for taking bait fish: The director may issue permits for the use of nets, seines, traps, or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking, and duration of the permit. The permittee shall report monthly the species, numbers and poundage of nongame fish taken during the preceding month.

L. Limit on angling hooks: It is unlawful to angle with more than two (2) barbless lures or flies with single point angling hooks on a single line when fishing the special trout water on the San Juan river designated in Subsection A of 19.31.4.11 NMAC.

M. [Reserved]

N. Number of fishing poles: It is unlawful to angle with more than one pole without having a current two rod validation or stamp affixed on the current license. It is unlawful under any circumstance to angle with more than two poles.

O. Exceeding daily bag limit: It is unlawful to exceed the daily bag limit [and/or] or possession limit of any protected fish species, as specified in Title 19, Chapter 31, Part 4.

P. Snagging game fish: It is unlawful to snag game fish except during the special kokanee salmon season as specified in Title 19, Chapter 31, Part 4.

Q. Chumming: It is unlawful to "CHUM" except in the following waters: All waters designated as warm waters; Gila river downstream from its junction with its east fork; Rio Grande downstream from its junction with the

Chama river, excluding the special trout water below Elephant Butte dam described in Subsection A of 19.31.4.11 NMAC.

R. Special trout waters: Only barbless lures or flies may be used in the special trout waters designated in Subsection A of 19.31.4.11 NMAC, except in the special trout water on the Rio Grande below Elephant Butte dam in which soft plastic lures may also be used, and in the following waters any legal angling gear and legal bait for trout waters may be used: the Vermejo river system within Vermejo Park ranch boundaries, Gilita and Willow creeks, and those waters designated in Subparagraph (e) of Paragraph (4) of Subsection A of 19.31.4.11 NMAC.

S. Attracting or concentrating fish:

(1) Artificial lights: Use of artificial lights is permitted for attracting game fish.

(2) Disturbing the bottom: It is unlawful in all special trout waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

T. Spears, gigs, and arrows:

(1) Spears, gigs, and arrows with barbs that are discharged beneath the water may be used only in lakes and reservoirs open to fishing.

(2) In addition, during the season established by Subsection B of 19.31.4.9 NMAC, kokanee salmon may be taken by the use of spears, gigs, and arrows with barbs that are discharged above or below the water and not driven by explosives, gas, air, or crossbow, except in the Pine river where spears, gigs, and arrows are prohibited.

U. Exemption of two rod validation requirement: A two rod validation or stamp is not required in warm waters as defined in Subsection C of 19.31.4.8 NMAC until April 1, 2004. [19.31.10.14 NMAC - Rp, 19.31.10.18 NMAC, 4-1-2007; A, 6-30-2008; A, 4-1-2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.100.110 NMAC, Section 11, effective 04/01/2010.

8.100.110.11 PROCESSING APPLICATIONS

A. FA/FS combined cases: To facilitate participation in the food stamp program, the Food Stamp Act requires that individuals applying for financial assistance

(FA) be able to apply for food stamp benefits (FS) at the same time.

(1) Application: A household applying jointly for FA and FS is required to file only one application form. The form contains the information necessary to complete the application process. If it is unclear whether the applicant intends to apply for FS, further information may be provided at the FA interview, or other contact may be made with the applicant. An application for FS will be processed in accordance with time standards and procedures set forth in federal regulations governing the food stamp program, including expedited processing provisions.

(2) Single interview: Whenever possible, a single interview will be held with an applicant who applies jointly for FA and FS benefits.

(3) Categorical eligibility: [A FS household in which all members receive or are authorized to receive financial assistance or SSI benefits is categorically eligible with respect to the eligibility criteria set forth in 8.139.420.8 NMAC.] A FS household which meets criteria set forth in 8.139.420.8 NMAC is categorically eligible. If a household does not meet FS eligibility criteria, but is potentially categorically eligible, the [ISS] caseworker must postpone denying the FS application until the 30th day.

(4) Application processing: As a result of differences in FA and FS application processing procedures and timeliness standards, eligibility for FS benefits may be determined prior to FA eligibility determination. Action on a FS application may be postponed until categorical eligibility is established to afford the household any benefits of this provision. However, FS approval may not exceed the applicable expedited or regular application processing timeliness standards.

(5) Application is denied: If an FA application is denied, an applicant is not required to file a new FS application. FS eligibility will be determined on the basis of the original application filed jointly for FA and FS, as well as any other documentation and information obtained in the course of the FA determination which is relevant to FS eligibility and benefit amount. A FS application may not be denied based on an FA denial reason.

(6) Denial retrieval: A FS application which is denied on the 30th day must be readily retrievable if the household is later determined eligible for financial assistance or SSI benefits. When this occurs, the ISS will use the original FS application, update any information and approve the FS case with prorated benefits as of the date of financial assistance or SSI approval or payment effective date, whichever is later. A second interview is not necessary, however, the applicant or authorized representative

should initial all changes and re-date and re-sign the original FS application.

B. Reporting changes:

All participants in ISD programs are required to report any changed circumstances which relate to their eligibility for assistance or level of benefits. Each participant is provided with a list of the specific information he/she is required to report and the reporting time limits. Clients who report a change for FA are considered to have reported the change for food stamp purposes. When a change is reported, ISD must ensure that adjustments are made in the client's eligibility status or allotment for those months in which the reported change is in effect.

(1) Notice: whenever a client's benefits are altered as a result of changes, or whenever a certification period is shortened to reflect changes in the household's circumstances, the client is notified of the action by ISD in accordance with the notice requirements. If the certification period is shortened, the household's certification period may not end any earlier than the second month following the month the ISS determines the certification period should end. This allows adequate time to send a notice of expiration and for the household to timely reapply. If FA benefits are terminated but the household is still eligible for food stamp benefits, members of the household must be informed about food stamp work registration and participation requirements, if applicable.

(2) FA reduction or termination within FS certification period: Whenever a reported change results in the reduction or termination of a client's FA benefits within the food stamp certification period, action will be taken to determine how the change affects the client's food stamp eligibility and benefit levels.

(a) Sufficient information: When there is sufficient information to determine how the change affects food stamp eligibility and benefit levels, the following actions will be taken:

(i) Reduction/termination of food stamp benefits: If the change requires a reduction or termination in either or both the FA and/or, FS payment, a single notice of adverse action will be issued for both the FA and food stamp actions. If the client requests a fair hearing within the period provided by the notice, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If a fair hearing is requested for both programs' benefits, the hearing is conducted according to FA procedures and time standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change is made effective in accordance

with the procedures specified in the food stamp program chapter on reporting and recertification.

(ii) Increase in food stamp benefits: If the reduction/termination of FA benefits results in the increase of food stamp benefits, the increase in food stamps occurs after the FA notice period expires and the FA grant is actually reduced or terminated.

(b) Insufficient information: Whenever there is insufficient information to determine how the FA change affects the client's food stamp eligibility and benefit level, the following actions shall be taken:

(i) FA notice of adverse action required: Where an FA notice of adverse action has been sent and the client requests a fair hearing and FA benefits are continued pending the appeal, the household's food stamp benefits will be continued on the same basis. However, the household must reapply for food stamp program benefits if the food stamp program certification period expires before the fair hearing process is completed.

(ii) FA notice of adverse action not required: If an FA notice of adverse action is not required, or the client decides not to request a fair hearing and continuation of FA benefits, the household must be notified that its certification period will expire at the end of the month following the month the notice of expiration is sent, and that it must reapply if it wishes to continue to participate in the food stamp program. The notice of expiration will also explain to the household that the certification period is expiring because of changes in its circumstances that may affect its food stamp program eligibility and benefit level.

(3) Certification periods: The ISS will assign FA and FS certification periods that expire at the same time. In no event are FA food stamp benefits to be continued beyond the end of a certification period.

(4) Recertification: Households in which all members are contained in a single financial assistance grant or in a single GA grant will have their food stamp interviews for recertification, to the extent possible, at the same time they are redetermined for FA.

(5) Reopened cases: If the FA and FS cases are closed or the FS certification expires, and the former recipient reapplies for one or both programs for the month following closure or expiration, benefits are prorated from the date of application for food stamps. If reapplication is made for FA and/or or food stamps or both, following a break of one full month or more, food stamp and financial assistance benefits for the month of application will be determined prospectively under beginning month provisions.

C. Other processing standards

(1) SSI Households: Households in which all members are applying for SSI benefits are handled in the same manner as financial assistance households with respect to the postponement of FS approval or denial and the retrieval of denied food stamp applications.

(a) Since the ISS does not have first-hand knowledge of the progress of the SSI application, and if the food stamp application is denied on the 30th day, the household must be advised to reapply for food stamps when it has been notified of SSI approval.

(b) SSI households are also entitled to apply for food stamps and be recertified at SSA offices. SSA will accept the application and forward the completed application, transmittal form, and any available verification to the designated food stamp office. When SSA accepts and refers the application, the household is not required to appear at a second office interview, although the ISS may request additional verification or information. Processing time limits begin when the food stamp application is registered at the SSA office.

(2) GA households: Households in which all members are applying for state administered general assistance (GA) are to be processed jointly for GA and food stamp benefits. However, since these households are not nor will they become categorically eligible, the provisions to postpone approval or denial and to retrieve denied food stamp applications do not apply.

(3) Mixed households: Households in which some but not all of the household members are applying for NMW benefits will file separate applications for FA and food stamp benefits. Applications will be handled under the same processing provisions required for nonfinancial assistance households. However, if those not applying for financial assistance benefits are recipients of SSI, the food stamp application would be jointly processed, because SSI recipients are already considered FA recipients.

[07/01/97, 04/01/98; 8.100.110.11 NMAC - Rn, 8 NMAC 3.ISD.114, 04/13/2001; A, 04/01/2010]

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

This is an amendment to 8.102.100 NMAC, Section 7, effective 04/01/2010.

8.102.100.7 DEFINITIONS:

A. Definitions A-L:

(1) **Applicant:** means person applying for cash assistance on behalf of a benefit group.

(2) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(3) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.

(4) **Authorized representative:** means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

(5) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(6) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(7) **Benefit group:** means a pregnant woman or a group of people that includes a dependant child, all of that dependent child's full, half, step- or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.

(8) **Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

(9) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(10) **Capital gains:** means proceeds from the sale of capital goods or equipment.

(11) **Cash assistance:** means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(12) **Caretaker relative:** means an individual who assumes parental control over a child living in the home.

(13) Categorical eligibility (CE):

means a food stamp household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.

(a) Financial CE: Any food stamp household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for food stamp benefits.

(b) Broad-based CE: Any food stamp household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.

(13) (14) Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(14) (15) Certification period: means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.

(15) (16) Collateral contact: means an individual or agency designated by the benefit group to provide information concerning eligibility.

(16) (17) Conciliation process: means a 30- day process during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

(18) Conversion factor: means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.

(17) (19) Date of admission: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(18) (20) Date of entry: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(19) (21) Department: means the human services department.

(20) (22) Dependent child: means a natural child, adopted child, stepchild or ward who is:

(a) seventeen years of age or

younger; or

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

(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department.

(21) (23) Director: means the director of the income support division.

(22) (24) Diversion payment: means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

(23) (25) Documentation: means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(24) (26) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(25) (27) Education works program (EWP): provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

(26) (28) Emancipated: means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

(27) (29) Encumbrance: means debt owed on property.

(28) (30) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(29) (31) Expedited services: means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the food stamp program.

(30) (32) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

(31) (33) Fair hearing: means an administrative proceeding which a claimant or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

(32) (34) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles,

the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

[(33)] (35) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

[(34)] (36) Federal fiscal year: October 1 through September 30 of the calendar year.

[(35)] (37) Federal means-tested public benefit: means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

[(36)] (38) Federal poverty guidelines: means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

[(37)] (39) Five-year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.

[(38)] (40) Food Stamp Act: the Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

[(39)] (41) General assistance (GA) benefit group: means a benefit group in which all members receive cash assistance financed by state or local funds.

[(40)] (42) Government entity: includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

[(41)] (43) Gross income: means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income, and income excluded by federal law.

[(42)] (44) Gross income test (85 percent test): for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

[(43)] (45) Head of household: means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker.

[(44)] (46) Immigrant: means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

[(45)] (47) Immigration and naturalization service (INS): a division of the U.S. department of justice.

[(46)] (48) Impairment: means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

[(47)] (49) Individual development account program: means an account created for eligible individuals which is established and maintained by an authorized financial institution to be used for individual development.

[(48)] (50) Individual development program: means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

[(49)] (51) Ineligible alien: means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

[(50)] (52) Initial month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

[(51)] (53) Inquiry: means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

[(52)] (54) Institution of higher education: means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

[(53)] (55) Institution of post-secondary education: means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age

of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

[(54)] (56) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

[(55)] (57) Issuance month: means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

[(56)] (58) Legal guardian: means a judicially or parental created relationship between a child and appointed adult.

B. Definitions M-Z:

(1) Maintenance of effort

(MOE): means the amount of general funds the state agency must expend annually on the four purposes of TANF to meet a minimum expenditure requirement based on a states historical AFDC expenditures.

[(4)] (2) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

[(2)] (3) Minor unmarried parent: means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

[(3)] (4) Month of approval: means the month the action to approve a benefit group for cash assistance is taken.

[(4)] (5) Net income tests: means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

[(5)] (6) Net monthly income: means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

[(6)] (7) Non-benefit group members: means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(8) Non-cash TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

[(7)] (9) Non-citizen U.S.

national: means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

[(8)] (10) Notice of adverse action (NOAA): means a written notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Recipients have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

[(9)] (11) Overissuance: means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

[(10)] (12) Parent: means natural parent, adoptive parent, or stepparent.

[(11)] (13) Participant: means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

[(12)] (14) Payment standard: means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction, recoupment or both.

[(13)] (15) Permanent total disability: means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

[(14)] (16) Person: means an individual.

[(15)] (17) Project area: means the geographic area designated to a county office that is responsible for the administration of the department's programs.

[(16)] (18) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

[(17)] (19) Qualified alien status: means a person lawfully admitted into the United States under INA guidelines as

defined in PROWRA of 1996.

[(18)] (20) Real property: means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

[(19)] (21) Recertification: means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

[(20)] (22) Recipient: means a person receiving cash assistance benefits.

[(21)] (23) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

[(22)] (24) Regular reporting: means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

[(23)] (25) Resource standard: means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

[(24)] (26) Retrospective budgeting: means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

[(25)] (27) Resource planning session: means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

[(26)] (28) School age: means any dependent child who turns six years prior to September first and is under 18 years of age.

[(27)] (29) Secretary: means the secretary of the department.

[(28)] (30) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

[(29)] (31) Semiannual reporting: means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a food stamp semiannual report is due.

[(30)] (32) Services: means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling;

employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

[(31)] (33) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

[(32)] (34) Single-parent benefit group: means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

[(33)] (35) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

[(34)] (36) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a) (15) and 101(a)(2) of the Immigration and Nationality Act.

[(35)] (37) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

[(36)] (38) Standard of need: means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

[(37)] (39) State-funded alien eligible: means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

[(38)] (40) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

[(39)] (41) Temporary total disability: means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

~~[(40)]~~ **(42) Two-parent benefit group:** means a benefit group which is 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.

~~[(41)]~~ **(43) Term limits:** means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

~~[(42)]~~ **(44) Unearned income:** means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

~~[(43)]~~ **(45) Vehicle:** means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not include any boat, trailer or mobile home used as the principal place of residence.

~~[(44)]~~ **(46) Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application.

~~[(45)]~~ **(47) Vocational education:** means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

~~[(46)]~~ **(48) Wage subsidy program:** means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 01/01/2004; A, 02/28/2007; A/E, 07/16/2007; A, 10/31/2007; A, 08/01/2009; A, 04/01/2010]

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

This is an amendment to 8.102.120

NMAC, Section 11, effective 04/01/2010.

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

A. Certification period:

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

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

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

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

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

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

(a) beginning the first month of eligibility; and

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

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

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

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

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

(5) Recertification: A benefit

group that is recertifying and is approved and assigned to semiannual reporting shall be assigned a certification period that:

(a) is twelve months long;

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

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

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

(1) a household in which all members are migrant or seasonal farm workers;

(2) a household in which all members are homeless;

(3) a household in which all members are elderly or disabled, that receive social security or SSI and has no earned income;

(4) a household determined by the county director to have insufficient stability and warrants an alternative reporting requirement; an unstable household may include but is not limited to:

(a) a household that reports an imminent change in residence to another state;

(b) a household that is assigned to an alternative reporting requirement because of instability, shall be certified for no longer than three months.

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

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

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

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

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

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

(3) the amount of unearned income

received by each benefit group member;

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

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

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

(5) dependent care expenses;

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

(7) changes in child support receipt; and

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

E. Budgeting methodology for semiannual reporting at initial application and recertification:

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

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

(3) At recertification, eligibility and amount of payment shall be determined prospectively for six months following last month benefit group's certification period.

F. Budgeting methodology for semiannual reporting:

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

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

(a) **Weekly:** For income received weekly the participant benefit group must submit and the department shall accept as verification income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

(b) **Bi-weekly:** For income received bi-weekly the participant benefit group must submit and the department shall accept as verification income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

(c) **Semi-monthly:** For income received semi-monthly the participant benefit group must submit and the department shall

accept as verification income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

(d) **Monthly:** For income received monthly the participant benefit group must submit and the department shall accept as verification income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

(e) **Income received more frequently than weekly:** For benefit groups with income received more frequently than weekly, exact income, rather than averaged and converted income shall be used to determine benefits. For income received more frequently than weekly the participant benefit group must submit and the department shall accept as verification income received from any consecutive past 30 day period that includes 30 days prior to the month the semiannual report and the month the report is due.

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

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

(3) Self-employment:

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

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

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

(i) If a self-employment enterprise has been in existence for less than one year, the income from self-employment

shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the duration of the certification period.

(ii) Seasonal income:

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

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

(4) Use of conversion factors:

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

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

Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(a) income received on a weekly basis is averaged and multiplied by 4.0;

(b) income received on a biweekly basis is averaged and multiplied by 2.0;

(c) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

(5) Effective April 1, 2010, changes to earned and unearned income shall be calculated using the conversion factors at Paragraph (4) of Subsection F of 8.102.120.11 NMAC provided new income is reported to the agency and verified by the household. All other households will have the income calculated at the next interim report or recertification.

(a) Recertification and interim reports submitted prior to April 1, 2010, but processed in April 2010 or later shall be processed using the March 2010 income

conversion methodology.

(b) Changes to earned or unearned income reported prior to April 1, 2010, but processed in April 2010 or later shall be processed using the income conversion methodology applicable for the benefit month being processed.

G. Time limits for submission and processing a semiannual report.

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

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

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

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

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

(i) notified that verification is lacking; and

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

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

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

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

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

(5) The benefit group must return the completed semiannual report form and all required verification within ten calendar days or by the end of the month to avoid a break in benefits. A benefit group that fails to submit a semiannual report by the end of the month in which it is due, shall be issued an adequate notice of closure.

H. Information requirements for semiannual reporting: The semiannual report form shall specify:

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

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

(3) that verification must be

submitted with the semiannual report;

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

(5) the consequences of providing incorrect information; and

(6) notice of rights.

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

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

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

J. Non-reporting

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

K. Action on changes reported between reporting periods for benefit groups assigned to semiannual reporting:

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

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

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

(c) a benefit group requests closure; or

(d) the department receives documented evidence that the head of benefit group has died.

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

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

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

group; and

(b) the loss of income was not due to voluntary quit.

(4) The loss of unearned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that the loss of income was reported to the agency, and verified by the benefit group.

[8.102.120.11 NMAC - N, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 11/14/2008; A, 04/01/2010]

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

This is an amendment to 8.102.500 NMAC, Section 9, effective 04/01/2010.

8.102.500.9 PROSPECTIVE BUDGETING:

A. Eligibility for cash assistance programs shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of disposition. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

B. Semiannual reporting: A benefit group subject to semiannual reporting shall be subject to income methodology as specified in Subsection H of 8.102.120.11 NMAC.

C. Changes in benefit group composition: A person added to the benefit group shall have eligibility determined prospectively beginning in the month following the month the report is made.

D. Anticipating income: In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification period shall be used.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation when there is fluctuating income within the weekly, biweekly, or monthly pay period and to

achieve a uniform amount for projecting.

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

F. Contract income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a 12-month period, provided that the income is not received on an hourly or piecework basis.

G. Using exact income: Exact income, rather than averaged income, shall be used if:

- (1) the benefit group has chosen not to average income;
- (2) income is from a source terminated in the month of application;
- (3) employment began in the application month and the income represents only a partial month;
- (4) income is received more frequently than weekly.

H. Income projection: Earned income shall be anticipated as described below.

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

I. Unearned income:

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue

during the certification; and

(b) the anticipated income is based on income received from any consecutive 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

J. Use of conversion factors: ~~[Conversion factors are used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly pay check is received, conversion factors are used to distribute the pay periods equally for the months in the certification period.]~~

~~(1) Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.~~

~~(2) Income received weekly is multiplied by 4.3.~~

~~(3) Income received biweekly is multiplied by 2.15.~~

K. Rounding of income when using conversion factors: ~~Averaged income is rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount is rounded up to the next higher dollar.]~~

Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by 4.0;

(2) income received on a biweekly basis is averaged and multiplied by 2.0;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

[8.102.500.9 NMAC - Rp 8.102.500.9 NMAC, 07/01/2001; A 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 04/01/2010]

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

This is an amendment to 8.106.100 NMAC, Section 7, effective 04/01/2010.

8.106.100.7 DEFINITIONS:

A. Definitions A-L:

(1) Adult residential shelter care home: means a shelter care home for adults that is licensed by the department of health.

(2) Alien: means an individual who is not a United States citizen.

(3) Application: means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.

(4) Attendant: means an individual needed in the home for medical, housekeeping or child care reasons.

(5) Authorized beneficiary: means the surviving spouse of a disabled adult or the caretaker of an unrelated child, who has the ability to use a deceased recipient's issued payment.

(6) Authorized representative: means an adult who is designated in writing by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.

(7) Basic needs: means food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(8) Benefit group: means an individual or group of individuals authorized to receive cash assistance financed by state or local funds.

(9) Benefit month: means the month for which cash assistance benefits are issued.

(10) Budget month: means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(11) Capacity to work: means the affects of impairment(s), work-related factors, functionality on the ability for an individual to engage in gainful employment.

(12) Capital gains: means the proceeds from the sale of capital goods or equipment.

(13) Caretaker: means an adult who has assumed primary responsibility for the care of an unrelated child; outside the fifth degree of relationship.

(14) Cash assistance: means state-funded cash assistance in the general assistance program, the adult residential home care shelter program, or the burial assistance program for the indigent.

(15) Categorical eligibility (CE): means a food stamp household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.

(a) Financial CE: Any food stamp household in which all members receive Title IV-A assistance (TANF),

general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for food stamp benefits.

(b) Broad-based CE: Any food stamp household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.

[(45)] (16) Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

[(46)] (17) Certification period: means the time period in calendar months that is assigned to a benefit group that is approved to receive cash assistance benefits.

[(47)] (18) Collateral contact: means an individual or agency designated to provide information concerning eligibility.

[(48)] (19) Contingency: means requirement(s) an individual must accept as a condition of eligibility such as, treatment available outside the GA program, unless a determination is made that good cause exists for the individual's inability to comply.

(20) Conversion factor: means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.

[(49)] (21) Date of admission: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

[(20)] (22) Date of authorization: means the date when action is taken to approve a cash payment for a benefit group.

[(21)] (23) Date of entry: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

[(22)] (24) Day(s): means working days, unless otherwise defined in this chapter.

[(23)] (25) Department: means the human services department.

[(24)] (26) Dependent child: means an individual who is seventeen years of age or younger; eighteen years of age and enrolled in high school; or between eighteen and twenty-two years of age and is receiving special education services regulated by the state public education department.

[(25)] (27) Director: means the director of the income support division.

[(26)] (28) Disability: means the definitions of disability related to the general assistance program and the disability determination process found at 8.106.420.7 NMAC.

[(27)] (29) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from

the direct provision of services, goods or property, production of goods, management of property or supervision of services.

[(28)] (30) Emancipated: means an individual under the age of 18 who is legally recognized as no longer under parental control due to the individual's marriage, active duty in the armed forces or by a decision of a court.

[(29)] (31) Encumbrance: means debt owed on property.

[(30)] (32) Equity value: means the fair market value of property, less any encumbrances owed on the property.

[(31)] (33) Essential person: means an individual responsible for the care of a disabled general assistance recipient to the extent that placement into institutional care would be required were it not for care provided by this individual.

[(32)] (34) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

[(33)] (35) Fair hearing: means an administrative proceeding that a claimant or his representative may request if:

(a) an application is not acted on within the application time limits at 8.106.110.12 NMAC; or

(b) an application is denied in whole or in part; or

(c) cash assistance or services are modified, terminated or not provided.

[(34)] (36) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or as a trade-in, not the amount the dealer would sell the vehicle for at retail.

[(35)] (37) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

[(36)] (38) Federal fiscal year: means the time period beginning on October 1 and ending on September 30 of the calendar year.

[(37)] (39) Federal poverty guidelines: means the level of income defining poverty by family size, published annually in the federal register by the United States department of health and human services.

[(38)] (40) Gainful employment: means any job or class of jobs in the state that would provide an income equaling or exceeding 85% of the federal poverty guidelines to the benefit group.

[(39)] (41) Government entity: means any federal, state, tribal or local unit of government as well as any non-government entity that receives public funds for the purpose of meeting the needs of its clientele.

[(40)] (42) Gross income:

means the total amount of earned or unearned income before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income and income excluded by federal law.

[(41)] (43) Gross income test: means the income test applied to the maximum income eligibility limit for participation in a particular cash assistance program based on the size of the household or benefit group.

[(42)] (44) Head of household: means an individual who is the responsible case head for the benefit group. The head of household may be the parent, guardian, sole adult member, specified relative, pregnant woman, a recipient of general assistance, or caretaker.

[(43)] (45) Immigrant: means an individual who is an alien as defined in title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA) and within the technical meaning at 8 U.S.C. 1101(a)(15).

[(44)] (46) Ineligible alien: means an individual who does not meet the eligible alien requirements or has not been admitted for permanent residence.

[(45)] (47) Initial month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

[(46)] (48) Inquiry: means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application for that program.

[(47)] (49) Interim assistance reimbursement: means the program within the social security administration that will reimburse the state through HSD for payments made to an individual receiving GA disability during the period the individual's application for SSI was pending.

[(48)] (50) Institution of higher education: means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

[(49)] (51) Institutionalized: Living in a facility licensed as an adult residential shelter care facility by the New Mexico department of health.

[(50)] (52) Irrevocable trust

funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

~~[(54)] (53) Issuance month:~~ means the calendar month in which cash assistance is issued.

~~[(52)] (54) Limited state funds:~~ means that the standard of need for a one person benefit group is calculated at \$150.00 per month or less.

B. Definitions M-Z:

~~[(1)] Maintenance of effort:~~ means the amount of general funds the state agency must expend annually on the four purposes of TANF to meet the minimum expenditure requirement based on a state's historical AFDC expenditures

~~[(4)] (2) Mandatory benefit group member:~~ The income and resources of mandatory members will always be considered to determine need, but not payment. In order to be included in the assistance group, members must individually meet eligibility requirements. Members mandatory for inclusion are: spouses residing in the home with the applicant, a caretaker of the applicant, and the father of an unborn child residing in the home with the applicant.

~~[(2)] (3) Medicaid:~~ means medical assistance under title XIX of the Social Security Act, as amended.

~~[(3)] (4) Minor unmarried parent:~~ means an unmarried parent who is under the age of 18 years or is age 18 and enrolled in high school.

~~[(4)] (5) Month of approval:~~ means the first month in which a benefit group is eligible for cash assistance.

~~[(5)] (6) Net income test:~~ means the income test applied to eligibility for a particular program after all allowable deductions are taken from the gross income for the household or benefit group. To be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

~~[(6)] (7) Net monthly income:~~ means gross non-exempt income minus the allowable deductions. Net monthly income is the figure used to determine eligibility and cash assistance benefit amount.

~~[(7)] (8) New Mexico works:~~ means the federally funded temporary cash assistance program for needy families that carries a sixty-month term limit for adults in the state.

~~[(8)] (9) Non-benefit group members:~~ means persons residing with a benefit group but who are specifically excluded by regulation from being included in the benefit group certification.

~~[(10) Non-cash TANF/MOE benefit or service:~~ means a non-cash TANF/MOE benefit or services including

programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

~~[(9)] (11) Notice of adverse action (NOAA):~~ means a written notice sent 13 days in advance of an action to reduce, suspend or terminate benefits that includes a statement of the action the department intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overpayment received if the hearing decision is adverse to the benefit group.

~~[(10)] (12) Overpayment/overissuance:~~ means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

~~[(11)] (13) Parent:~~ means a natural parent, adoptive parent, or stepparent.

~~[(12)] (14) Payment:~~ means the amount of the cash assistance benefit, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and before any reduction by sanction or recoupment.

~~[(13)] (15) Permanently residing under color of law (PRUCOL):~~ means aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law as follows.

(a) The individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the immigration and naturalization services (INS) and the INS does not contemplate enforcing the alien's departure. The INS does not contemplate enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the aliens status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an immigration and naturalization service status other than those applicants listed in Item (vi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC or those covered under Item (xvi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC. None of the categories allow medicaid eligibility for non-immigrants; for example,

students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories.

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of INS Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5) (Section 212(d)(5)) of the Immigration and Nationality Act; for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization services letter with this information or INS Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization services letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the immigration and naturalization services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the immigration and naturalization services pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant immigration and naturalization services instructions, whose departure that agency does not contemplate enforcing; ask for a copy of INS Form I-94 or a letter from the immigration and naturalization service, or a copy of a court order establishing the alien's status;

(viii) aliens granted

asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of INS Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of INS Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Naturalization Act (8 U.S.C. 1254) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state).

(14) (16) Person: means an individual.

(15) (17) Project area: means the geographic area designated to a county office that is responsible for the administration of the department's programs.

(16) (18) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on an estimate of income and circumstances that will exist in the current month and future months.

(17) (19) Qualified alien: includes any of the classes of immigrant status granted by USCIS below:

(a) an alien who is lawfully-admitted for permanent residence (LPR) under the Immigration and Nationality Act (INA);

(b) an alien granted asylum under section 208 of the INA;

(c) an alien admitted into the United States as a refugee under section 207 of the INA;

(d) an alien paroled into the United States for a period of at least one year under section 212(d)(5) of the INA;

(e) an alien whose deportation has been withheld under section 243(h) of the INA as in effect prior to April 1, 1997, who whose removal has been withheld under section 241(b)(3) of the INA;

(f) an alien who has been granted conditional entry pursuant to section 203(a) (7) of the INA as in effect prior to April 1, 1980;

(g) an alien who was a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

(h) an alien, an alien parent or alien child, who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse or parent's family residing in the same home as the alien at the time of the abuse and there is a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA, as long as the alien has begun the process of becoming a lawful permanent resident under the Violence Against Women Act;

(i) an alien who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

(18) (20) Real property: means land and affixed improvements and structures, which include mobile homes. Grazing permits are also considered real property.

(19) (21) Recertification: means a complete review of all conditions of eligibility and a redetermination of the amount of the cash assistance benefits for an additional period of time.

(20) (22) Recipient: means a person receiving cash assistance benefits.

(21) (23) Reconsideration: means a re-evaluation of disability based on

additional medical evidence provided by the client.

(22) (24) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

(23) (25) Resource standard: means the financial standard with respect to an applicant's/recipient's resources and property, which is set at \$2,000 for non-liquid resources and \$1500 for liquid resources.

(24) (26) Retrospective budgeting: means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(25) (27) Secretary: means the secretary of the human services department.

(26) (28) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income.

(27) (29) Semiannual reporting: means a requirement for a benefit group to file a report of information in the sixth month of a 12-month certification period to determine if eligibility for benefits can continue.

(28) (30) Set term GA: The certification period shall be for a set length of time dependent upon conditions, beginning from the month of approval and is not subject to review.

(29) (31) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(30) (32) Single-parent benefit group: means a benefit group that does not include both parents of a child who is included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(31) (33) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(32) (34) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a) (15) and 101(a)(2) of the Immigration and Nationality Act.

(33) (35) Spouse: means an individual legally bound by marriage.

(34) (36) Stale: means EBT accounts which have not been accessed (no withdrawal activity) by the household in the last 90 days from the most recent date of withdrawal.

(35) (37) Standard of need: means the amount provided to each GA

cash assistance benefit group on a monthly basis and is based on legislative funding, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR case number and expenditures, and number of pending applications.

~~[(36)]~~ **(38) Supplemental security income (SSI):** means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 1382 of the Social Security Act.

~~[(37)]~~ **(39) Unavailable state funds:** means the funds are not sufficient to provide all GA benefit groups with a one dollar monthly cash payment.

~~[(38)]~~ **(40) Unearned income:** Means old age, survivors and disability insurance payments (social security); railroad retirement benefits; veterans administration compensation or pension payments; military retirement and allotments; pensions, annuities and retirement benefits; lodge or fraternal benefits; other public or private disability or retirement benefits or pension; shared shelter payments; individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

~~[(39)]~~ **(41) Unrelated caretaker:** means an individual who is not a specified relative within the fifth degree of relationship of a dependent child and has assumed responsibility for care, support and supervision of an unrelated child and for meeting the child's physical and emotional needs.

~~[(40)]~~ **(42) Unrelated child:** means a minor, under 18 years of age, residing with a caretaker who is not a specified relative within the fifth degree of relationship.

~~[(41)]~~ **(43) Variable term GA:** The certification period shall be set for a length of time, not to exceed 12 months, beginning from the month of approval and is subject to review.

~~[(42)]~~ **(44) Verification:** means the use of third-party information or documentation to establish the accuracy of statements on the application.

~~[(43)]~~ **(45) Work related factors:** means factors taken into account in the disability determination process such as age, education, training, work experience, language ability, appearance, marital status,

living situation, as well as relevant social history and minimal employment and activities that would be required in a work setting such as sitting, standing, walking, lifting, carrying, handling, seeing, hearing, communicating and understanding and following directions.

[8.106.100.7 NMAC - Rp, 8.106.100.7 NMAC, 12/01/2009; A, 04/01/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, Section 9, effective 04/01/2010.

8.106.500.9 PROSPECTIVE BUDGETING:

A. Initial eligibility: Eligibility for cash assistance programs shall be determined prospectively. The benefit group must meet all eligibility criteria in the month following the month of application. Eligibility and amount of payment shall be determined prospectively for each month in the certification period.

B. Changes in benefit group composition: A person added to the benefit group shall have eligibility determined prospectively, beginning in the month following the month the report is made.

C. Anticipating income: In determining the benefit group's eligibility and benefit amount, the income already received and any income the benefit group expects to receive during the certification period shall be counted.

(1) Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

(2) Actual income shall be calculated by using the income already received and any other income that can reasonably be anticipated in the calendar month.

(3) If the amount of income or date of receipt is uncertain, the portion of the income that is uncertain shall not be counted.

(4) In cases where the receipt of income is reasonably certain but the amount may fluctuate, the income shall be averaged.

(5) Averaging is used to determine a monthly calculation, when there is fluctuating income within the weekly, biweekly or monthly pay period and to achieve a uniform amount for projecting future income.

D. Counting income in the certification period:

(1) For the purposes of cash assistance eligibility and determination of benefit amount, income is money received by or available to the benefit group in each month of the certification period.

(2) Only income which is actually received, or can reasonably be expected to be received, is counted for financial eligibility and benefit calculation.

(3) The benefit group must take appropriate steps to apply for and receive income from any other source to which the group may potentially be entitled.

(4) A benefit group may be found ineligible for failing or refusing to apply for or pursue potential income or assets from other sources.

(5) A benefit group member who is 62 years of age or older must apply for and take all necessary steps to receive a reduced OASDI benefit from the SSA.

E. Income availability:

(1) The availability of income to the benefit group is determined by who must be included in the benefit group and whether income must be deemed available to the benefit group.

(2) The earned and unearned income of an individual who is not a mandatory benefit group member shall not be considered available to the benefit group.

(3) Income belongs to the person who gains it, either through the person's own efforts, as in the case of earnings, or as a benefit, as in the case of a beneficiary of SSA benefits.

(4) Unearned income, such as child support or social security survivor's benefits and other similar payments for a child, are considered as belonging to the benefit group in which the child is included.

(5) Alien sponsors: The gross income belonging to an individual who is the sponsor of an alien included in the cash assistance benefit group, and the income belonging to the sponsor's spouse, shall be counted in its entirety to determine the eligibility and benefit amount if the sponsor has executed an affidavit of support pursuant to Subsection 213-A of the Immigration and Nationality Act. The income of the alien sponsor and spouse shall be counted until the sponsored alien achieves citizenship or can be credited with 40 qualifying quarters under title II of the federal Social Security Act.

F. Unavailable income:

In some situations, individuals who are included in the benefit group, either in applicant or recipient status, have a legal right to income but do not have access to it. Such income is not counted as available income for purposes of cash assistance eligibility and benefit calculation.

G. Ineligible alien: The countable income belonging to an ineligible alien who is a mandatory benefit group member is deemed available to the benefit group. The countable income shall be prorated according to the size of the benefit group to determine the eligibility and benefit amount for the benefit group.

H. Income received less

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

I. Contract income: A benefit group that derives its annual income in a period of less than one year shall have that income averaged over a twelve-month period, provided that the income is not earned on an hourly or piecework basis.

J. Using exact income: Exact income, rather than averaged income, shall be used if:

- (1) the benefit group has chosen not to average income;
- (2) income is from a source terminated in the month of application;
- (3) employment began in the application month and the income represents a partial month; or
- (4) income is received more frequently than weekly.

K. Income projection for earned income:

(1) Income from the four-week period prior to the date of initial interview is used to project monthly income, provided that the income is expected to continue. If a determination is made that the prior income is not indicative of income anticipated to be received during the certification period, then income from a longer period of past time may be used. If the longer period is not indicative of income anticipated to be received, then verification of anticipated income shall be obtained from the income source.

(2) The methods described above may not give the most accurate estimate of monthly earnings due to unique circumstances that may occur. In such cases, the caseworker shall use whichever method provides the most accurate estimate of earnings.

(3) An income projection shall be considered valid for the certification period unless changes are made that affect eligibility or benefit amount.

L. Unearned income: For purposes of anticipating future income, unearned income from the four-week period prior to the date of interview shall be used, provided that the income is expected to continue.

M. Use of conversion factors: ~~[Conversion factors are used to adjust the monthly income amounts. For those months in which an extra weekly or biweekly paycheck is received, conversion factors are used to distribute the pay periods equally for the months in the certification~~

~~period.~~

~~(1) Whenever a full month's income is anticipated, but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount.~~

~~(2) Income received weekly is multiplied by 4.3.~~

~~(3) Income received biweekly is multiplied by 2.15.~~

~~N. Rounding of income when using conversion factors: Averaged income is rounded prior to application of the conversion factor. If the cents are \$.49 or below, the cents are dropped. If the cents are \$.50 or more, the amount is rounded up to the next higher dollar.] Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:~~

~~(1) income received on a weekly basis is averaged and multiplied by 4.0;~~

~~(2) income received on a biweekly basis is averaged and multiplied by 2.0;~~

~~(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.~~

~~[8.106.500.9 NMAC - N, 07/01/2004; A, 04/01/2010]~~

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**This is an amendment to 8.139.100
NMAC, Section 7, effective 04/01/2010.**

8.139.100.7 DEFINITIONS:

A. Definitions A-L:

(1) **Adequate notice:** means a written notice that includes a statement of the action HSD has taken or intends to take, reason for the action, household right to a fair hearing, name of the individual to contact for additional information, the availability of continued benefits liability of the household for any overissuances received if hearing decision is adverse to the household. An adequate notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, participants have 13 days from the mailing date of the notice to request that benefits be restored to their previous level pending the outcome of an administrative hearing.

(2) **Adjusted net income:** means the household's gross monthly income less the standard deduction, earned income deduction, dependent care deduction and the shelter deduction. (Medical expenses are allowed for certain eligible members as a deduction from their gross income). 30

percent of this amount subtracted from the MFSA for the household's size is its benefit amount.

(3) **Application:** means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(4) **Annual reporting:** means a reporting requirement that allows a household to submit a report in the twelfth month of the certification period. During the certification period, a household on annual reporting is only required to report when the household's income reaches or exceeds 130 percent of the federal poverty guideline for the size of the household.

(5) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.

(6) **Authorized representative:** means an individual designated by a household or responsible member to act on its behalf in applying for food stamp benefits, obtaining food stamp benefits, or using food stamp benefits to purchase food for the household. This can include a public or private, nonprofit organization or institution providing assistance, such as a treatment or rehabilitation center or shelter which acts on behalf of the resident applicant.

(7) **Benefit month:** means the month for which food stamp benefits have been issued. This term is synonymous with issuance month defined below.

(8) **Beginning month:** means the first month for which a household is certified after a lapse in certification of at least one calendar month in any project area. A household is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(9) **Boarder:** means an individual to whom a household furnishes lodging and meals for reasonable compensation. Such a person is not considered a member of the household for determining the food stamp benefit amount.

(10) **Boarding house:** means a commercial establishment, which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house is not used to establish if a boarding house is a commercial enterprise.

(11) **Budget month:** means the calendar month for which income and other circumstances of the household are determined in order to calculate the food stamp benefit amount. During the beginning month of application, prospective budgeting shall be used and therefore, the budget month and the issuance month are the same.

(12) **Capital gains:** means proceeds from the sale of capital goods or equipment.

(13) Categorical eligibility (CE):

means a food stamp household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.

(a) Financial CE: Any food stamp household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for food stamp benefits.

(b) Broad-based CE: Any food stamp household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.

[(13)] (14) Cash assistance (CA) households: (also referred to as financial assistance) means households composed entirely of persons who receive CA payments. Cash assistance (CA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. CA households composed entirely of TANF, GA or SSI recipients are categorically eligible for FS.

[(14)] (15) Certification: means the authorization of eligibility of a household and issuance of food stamp benefits.

[(15)] (16) Certification period: means the period assigned for which a household is eligible to receive food stamp benefits. The certification period shall conform to calendar months.

[(16)] (17) Collateral contact: means an individual or agency designated by the household to provide information concerning eligibility.

[(17)] (18) Communal diner: means an individual sixty (60) years of age or over who is not a resident of an institution or a boarding house, who is living alone or with a spouse, and elects to use food stamp benefits to purchase meals prepared for the elderly at a communal dining facility which has been authorized by USDA/FNS to accept food stamp benefits.

[(18)] (19) Communal dining facility: means a public or private nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for SSI recipients, and their spouses; a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It

also includes private establishments that contract with an appropriate state or local agency to offer meals at concession prices to elderly persons or SSI recipients and their spouses. Such establishments include a facility such as a senior citizen's center, an apartment building occupied primarily by elderly persons, or any public or private nonprofit school (tax exempt) which prepares and serves meals for elderly persons.

(20) Conversion factor: means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.

[(19)] (21) Date of admission: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

[(20)] (22) Date of entry: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

[(21)] (23) Disability: means the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

[(22)] (24) Disabled member: see elderly/disabled member.

[(23)] (25) Documentation: means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

[(24)] (26) Drug addiction or alcoholic treatment and rehabilitation program: means any drug addiction treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center under part B of title XIX of the Public Health Service Act (42 U.S.C. 3004 et seq.)

[(25)] (27) Elderly or disabled member:

(a) Elderly: means an individual 60 years or older.

(b) Disabled: means a person who meets any of the following standards:

(i) receives supplemental security income (SSI) under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(ii) receives federally or state administered supplemental benefits under section 1616a of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(iii) receives federally or state administered supplemental benefits under section 212(a) of Pub. L. 93-66;

(iv) receives disability retirement benefits from a government

agency (e.g. civil service, ERA, and PERA) because of a disability considered permanent under section 221(i) of the Social Security Act;

(v) is a veteran with a service-connected or non-service connected disability rated by the veterans administration (VA) as total or paid as total by the VA under title 38 of the United States code;

(vi) is a veteran considered by the VA to be in need of regular aid and attendance or permanently homebound under title 38 of the United States code;

(vii) is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently homebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States code;

(viii) is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for service-connected death or pension benefits for a non-service-connected death under title 38 of the United States code and has a disability considered permanent under section 221(i) of the Social Security Act ("entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated, or have been approved for such payments, but are not yet receiving them); or

(ix) receives an annuity payment under section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive medicare by the railroad retirement board, or section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act;

(x) is a recipient of interim assistance benefits pending the receipt of supplemental security income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based state general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the state agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

[(26)] (28) Eligible foods: means:

(a) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot-food products prepared for immediate consumption;

(b) seeds and plants to grow foods for the personal consumption of eligible

households;

(c) meals prepared and delivered by an authorized meal delivery service to households eligible to use food stamp benefits to purchase delivered meals, or meals served by an authorized communal dining facility for the elderly, for SSI households, or both, to households eligible to use food stamp benefits for communal dining;

(d) meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to eligible households;

(e) meals prepared and served by a group living arrangement facility to residents who are blind or disabled as found in the definition of "elderly or disabled member" contained in this section;

(f) meals prepared and served by a shelter for battered women and children to its eligible residents; and

(g) in the case of homeless food stamp households, meals prepared and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter) approved by HSD that feeds homeless persons.

(27) (29) Encumbrance: means debt owed on property.

(28) (30) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(29) (31) Excluded household members: means individuals residing within a household who are excluded when determining household size, the food stamp benefit amount or the appropriate MFSA. These include ineligible aliens, individuals disqualified for failure to provide an SSN, or failure to comply with the work requirements, and those disqualified for intentional program violation. The resources and income (counted in whole or in part) of these individuals shall be considered available to the remaining household members. (See non-household members).

(30) (32) Expedited services: means the process by which households reporting little or no income or resources shall be provided an opportunity to participate in the FSP, no later than the seventh calendar day following the date the application was filed.

(31) (33) Expungement: means the permanent deletion of food stamp benefits from an EBT account that is stale.

(32) (34) Fair hearing: an administrative procedure during which a claimant or the claimant's representative may present a grievance to show why he/she believes an action or proposed action by HSD is incorrect or inaccurate.

(33) (35) Fair market value (FMV): means the amount an item can be expected to sell for on the open market. The prevailing rate of return, such as square foot rental for similar usage of real property in an

area.

(34) (36) Financial assistance (FA) households: (also referred to as cash assistance) means households composed entirely of persons who receive FA payments. Financial assistance (FA) means any of the following programs authorized by the Social Security Act of 1935, as amended: old age assistance; temporary assistance to needy families (TANF); aid to the blind; and aid to the permanently and totally disabled; and aid to the aged, blind or disabled. It also means general assistance (GA), cash payments financed by state or local funds, made to adults with no children who have been determined disabled, or to children who live with an adult who is not related. FA households composed entirely of TANF, GA or SSI recipients are categorically eligible for FS.

(35) (37) FNS: means the food and nutrition service of the United States department of agriculture (USDA).

(36) (38) Food Stamp Act: the Food and Nutrition Act of 2008, and subsequent amendments.

(37) (39) Fraud: the elements of fraud are:

(a) intentionally taking anything of value;

(b) intentionally making a misrepresentation of, or failing to disclose, a material fact: with the knowledge that such a fact is material (necessary to determine initial/ongoing eligibility or benefit entitlement); and with the knowledge that the information is false; and with the intent that the information be acted upon (deceive/cheat); with reasonable reliance on the person who hears the information to accept it as the truth.

(c) In determining whether there is a "reasonable suspicion" of client fraud, particular attention shall be given to the client's intent in providing false information or withholding information. The law requires that the client acted intentionally in giving or withholding information, and with the further specific intent to deceive or cheat.

(d) The materiality of the information in question is determined by whether the information was necessary to determine eligibility or benefit amounts. However, the client must have knowledge that the information is material to the client's eligibility or benefit amount.

(e) In order to establish a "reasonable suspicion" of client fraud, there must be identifiable objective factors indicating that there is a possibility of fraud in the case. This means that there must be more than a "hunch". However, it is not necessary for the caseworker to make a determination that fraud has been actually committed.

(38) (40) Full time employment (FS): working thirty (30) hours or more per

week, or earning income equivalent to the minimum wage multiplied by 30 hours.

(39) (41) General assistance (GA) households: means a household in which all members receive cash assistance financed by state or local funds.

(40) (42) Gross income: the total amount of income that a household is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the household, but diverted by the provider. Gross income does not include specific income exclusions, such as, but not limited to, the cost of producing self-employment income, and income excluded by federal law.

(41) (43) Group living arrangements: means a residential setting that serves no more than sixteen residents that is certified by DOH under regulations issued under section 1616(e) of the Social Security Act, or under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident shall be living in a public or private non-profit group living arrangement and must be blind or disabled as defined in the definition of "elderly or disabled member" set forth at (i) through (x) of Subparagraph (b) of Paragraph (25) of Subsection A of 8.139.100.7 NMAC.

(42) (44) Head of household: the household is the basic assistance unit for the food stamp program. The household has the right to select the head of household in accordance with the CFR 273.1 (d).

(43) (45) Homeless individual: means an individual who lacks a fixed and regular nighttime residence, or an individual whose primary nighttime residence is:

(a) a supervised shelter providing temporary accommodations (such as a welfare hotel or congregate shelter);

(b) a halfway house or similar institution providing temporary residence for individuals intended to be institutionalized;

(c) a temporary accommodation for no more than 90 days in the residence of another individual, beginning on the date the individual moves into the temporary residence; or

(d) a place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

(44) (46) Homeless meal provider: means a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter), approved by an appropriate state agency, that feeds homeless persons.

(45) (47) Immigrant: means a

lawfully admitted alien who entered the U.S. with the expressed intention of establishing permanent residence as defined in the federal act.

[(46)] (48) Immigration and naturalization service (INS): a division of the U.S. department of justice.

[(47)] (49) Ineligible alien: means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

[(48)] (50) Income: means all monies received by the household from any source, excluding only the items specified by law or regulation. Income is also defined as any monetary gain or benefit to the household.

[(49)] (51) Income and eligibility verification system: means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of section 1137 of the Social Security Act, referred to as IEVS.

[(50)] (52) Initial month: means the first month for which a first-time household is certified for participation in the food stamp program. An initial month is also a month in which a household is certified following a break in participation of one calendar month or longer. For migrant or seasonal farm worker households, an initial month shall only be considered if there has been an interruption in certification of at least one calendar month.

[(51)] (53) Inquiry: means a request for information about eligibility requirements for a cash, medical, or food assistance program that is not an application. (although the inquiry may be followed by an application).

[(52)] (54) Institution of higher education: means any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

[(53)] (55) Institution of post-secondary education: means an institution of post-secondary education and any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or provides a program of training to prepare students for gainful employment.

[(54)] (56) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of

another that cannot be revoked.

[(55)] (57) Issuance month: means the calendar month for which food stamps are issued. In prospective budgeting, the budget and issuance months are the same. In retrospective budgeting, the issuance month follows the budget month.

[(56)] (58) Low-income household: means a household whose annual income does not exceed 125 percent of the office of management and budget poverty guideline.

B. Definitions M-Z:

(1) Maintenance of effort (MOE): means the amount of general funds the state agency must expend annually on the four purposes of TANF to meet a minimum expenditure requirement based on a states historical AFDC expenditures.

[(57)] (2) Maximum food stamp allotment (MFSA): the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age. The cost of such a diet shall be the basis for uniform food stamp benefit amounts for all households, regardless of their actual composition. In order to develop maximum food stamp benefit amounts, the USDA makes adjustments for household size taking into account the economies of scale and other adjustments as required by law. The MFSA is used to determine if a boarder is paying reasonable compensation for services. The maximum food stamp allotment (MFSA) was the thrifty good plan (TFP).

[(58)] (3) Meal delivery service: means a political subdivision, a private nonprofit organization, or a private establishment with which a state or local agency has contracted for the preparation and delivery of meals at concession prices to elderly persons, and their spouses, and to the physically or mentally handicapped, and to persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

[(59)] (4) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

[(60)] (5) Migrant/migrant household: means an individual who travels away from home on a regular basis with a group of laborers to seek employment in an agriculturally related activity. A migrant household is a group that travels for this purpose.

[(61)] (6) Mixed households: means those households in which some but not all of the members receive cash assistance benefits.

[(62)] (7) Net monthly income: means gross nonexempt income minus the allowable deductions. It is the income figure used to determine eligibility and food stamp benefit amount.

[(7)] (8) Non-cash assistance (NCA) households: means any household, which does not meet the definition of a cash assistance household, including households composed of both cash assistance and NCA members (mixed household). Same as non-financial households (NFA).

(9) Non-cash TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

[(8)] (10) Non-financial assistance (NFA) households: means any household, which does not meet the definition of a financial assistance household, including households composed of both cash assistance and NFA members (mixed household). Same as non-cash households (NCA).

[(9)] (11) Nonhousehold members: persons residing with a household who are specifically excluded by regulation from being included in the household certification, and whose income and resources are excluded. Nonhousehold members include roomers, boarders, attendants, and ineligible students. Included in this classification are institutionalized household members such as children attending school away from home and members who are hospitalized or in a nursing home.

[(10)] (12) Overissuance: means the amount by which food stamp benefits issued to a household exceed the amount the household was eligible to receive.

[(11)] (13) Period of intended use: means the month in which the benefits are issued if issued before the 20th of the month. For benefits issued after the 20th of the month, the period of intended use is the rest of the month and the following month.

[(12)] (14) Principal wage earner: means the household member with the greatest amount of earned income in the two months preceding a determination that a program rule has been violated. This applies only if the employment involves 20 hours or more a week or pays wages equivalent to the federal minimum wage multiplied by 20 hours. In making this evaluation, the entire household membership shall be considered, even those who are excluded or disqualified but whose income must be counted for eligibility and benefit amount determination. For purposes of determining noncompliance with the food stamp work requirements, including employment and training components, voluntary quit, and work-fare, the head of household is the principal wage

earner unless the household has selected an adult parent of children (of any age) or an adult with parental control over children (under age 18) as the designated head of household as agreed upon by all adult members of the household. A person of any age shall not be considered the principal wage earner if they are living with a parent or person fulfilling the role of parent, if the parent or parent-substitute is:

- (a) registered for employment;
- (b) exempt because of Title IV compliance;
- (c) in receipt of UCB or is registered as part of the UCB process; or
- (d) employed or self-employed a minimum of 30 hours a week or receiving income at the federal minimum hourly rate multiplied by 30 hours.

[(43)] (15) Project area: means the county office or similar political subdivision designated as the unit for FSP operations.

[(44)] (16) Prospective budgeting: means the computation of a household's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

[(45)] (17) Quality control (QC): federally mandated as part of the performance reporting system whereby each state agency is required to review a sample of active cases for eligibility and benefit issuance, and to review a sample of negative cases for correct application of policy. The objectives are to determine a state's compliance with the Food Stamp Act and CFR regulations, and to establish the basis for a state's error rate, corrective action to avoid future errors, and liability for errors in excess of national standards, or eligibility for enhanced federal funding if the error rate is below national standards.

[(46)] (18) Real property: means land, buildings, and whatever is built on or affixed to the land.

[(47)] (19) Recipient: means a person receiving food stamp benefits. (same as a participant.)

[(48)] (20) Refugee: means a lawfully admitted individual granted conditional entry into the U.S.

[(49)] (21) Reasonable compensation: means a boarder payment, in cash, equivalent to the MFSA for the number of boarders.

[(20)] (22) Regular reporting: means a reporting requirement in which a household is not required to meet semiannual reporting requirements, and must report a change within ten days of the date the change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first

payment is made for an allowable expense.

(b) A non-financial change, including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

[(21)] (23) Retail food store: means:

(a) an establishment or recognized department of an establishment, or a house-to-house trade route, whose eligible food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry, is more than 50 percent staple food items for home preparation and consumption;

(b) public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts or alcoholics;

(c) public or private nonprofit group living arrangements, or public or private nonprofit shelters for battered women and children, or public or private nonprofit establishments, approved by HSD, or a local agency, that feed homeless persons;

(d) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; a farmer's market.

[(22)] (24) Retrospective budgeting: means the computation of a household's benefits for an issuance month based on actual income and circumstances that existed in the previous month, the "budget" month.

[(23)] (25) Self-employed: an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income. The individual is not eligible to draw UCB by virtue of their job efforts.

[(24)] (26) Semiannual reporting: means a reporting requirement that allows a 12-month certification period and requires a household to submit a report in the sixth month of the certification period. During the certification period, a household on semiannual reporting is only required to report when the household's income reaches or exceeds 130 percent of the federal poverty guideline for the size of the household

[(25)] (27) Simplified reporting: means an alternative change reporting requirement for households that receive food stamp benefits.

[(26)] (28) Shelter for battered women and children: means a public or private nonprofit residential facility that serves battered women and their children.

If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

[(27)] (29) Sponsor: means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

[(28)] (30) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Subsection 101(a)(15) and Subsection 101(a)(2) of the Immigration and Nationality Act.

[(29)] (31) Spouse: means either of two individuals who:

(a) would be defined as married to each other under applicable state law; or

(b) are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

[(30)] (32) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

[(31)] (33) Standard utility allowance (SUA): means an average utility amount used year round that includes the actual expense of heating and cooling fuel, electricity (apart from heating or cooling), the basic service fee for one telephone, water, sewerage, and garbage and trash collection. This amount is adjusted annually to reflect changes in expenses. A cooling expense is a verifiable utility expense relating to the operation of air conditioning.

[(32)] (34) State wage information collection agency: the wage information collection agency for the state of New Mexico is the ~~[department of labor (DOL)]~~ department of workforce solutions, employment security division (ESD) which administers the state employment compensation law and which provides a quarterly report of employment related income and eligibility data.

[(33)] (35) Striker: means anyone involved in a strike or concerted work stoppage by employees (including stoppage due to the expiration of a collective bargaining agreement) and any concerted slow down or other concerted interruption of operations by employees.

[(34)] (36) Student: means an individual attending school at least half time, as defined by the institution; any kindergarten, preschool, grade school, high school, vocational school, technical school, training program, college, or university.

[(35)] (37) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; or

(b) section 1616(a) of the Social Security Act; or

(c) section 212(a) of P.L. 93-66.

[(36)] (38) SSI household: means a household in which all members are applicants or recipients of SSI. An SSI household may also apply for food stamps through a social security office. The application must be forwarded to the appropriate food stamp (ISD) office for processing. SSI households are categorically eligible.

[(37)] (39) Supplementary unemployment benefits (SUB): part of the guaranteed annual wage provisions in the auto industry whereby the company supplements state UCB to insure that laid off workers receive a guaranteed amount of income during the layoff period.

[(38)] (40) Thrifty food plan (TFP): see maximum food stamp allotment.

[(39)] (41) Transitional housing: housing is transitional if its purpose is to facilitate the movement of homeless individuals and families to permanent housing within 24 months, or such longer period as is determined necessary. All types of housing meant to be transitional should be considered as such for the purpose of determining exclusion. The definition does not exclude specific types of housing and does not require the presence of cooking facilities in a dwelling.

[(40)] (42) Vehicles: means a mode of transportation for the conveyance of passengers to or from employment, daily living, or for the transportation of goods. For purposes of the food stamp program boats, trailers, and mobile homes shall not be considered as vehicles.

[(41)] (43) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application.

[8.139.100.7 NMAC - Rn, 8.139.650.7 NMAC & A, 02/14/2002; A, 01/01/2004; A, 02/28/2007; A/E, 10/15/2008; A, 04/01/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.120 NMAC, Sections 10, 11, and 12 effective 04/01/2010.

8.139.120.10 REQUIREMENTS FOR SEMIANNUAL HOUSEHOLDS:

A. Household responsibilities at application: Changes occurring after the interview, but before the date of the approval notice, must be reported by the household within 10 days of the date

the household receives its approval notice.

B. A household subject to semiannual reporting shall be required to file a semiannual report no later than the tenth day of the sixth month of the 12-month certification period. The following information, along with required verification, must be provided with the report:

(1) any change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(2) the gross monthly income received from employment by each household member;

(3) the gross monthly unearned income received by each household member;

(4) changes in countable resources if the total of all countable resources for the food stamp household exceeds the applicable resource limit;

(5) dependent care expenses;

(6) a change in medical expenses;

(7) a change in child support obligations;

(8) student status for anyone living in the home over the age of 17 years, including but not limited to:

(a) a change in status from non-college to college student;

(b) a change in status from college student to non-college status;

(c) a change in post-secondary curriculum to or from at least halftime; and

(d) participation in or termination of work study;

(9) a change in immigrant (alien) status for a household member.

C. Budgeting methodology for semiannual reporting:

(1) Prospective budgeting shall be used for an applicant household at initial application and at recertification as set forth at 8.139.500.9 NMAC.

(2) **Initial application:** Eligibility and amount of payment for the applicant household shall be determined prospectively for the each of the first six months of the certification.

(3) **Processing the semiannual report:** Eligibility and food stamp benefit amount shall be determined prospectively for the six months following the month the semiannual report is due.

(4) **Recertification:** Eligibility and amount of payment shall be determined prospectively for each of the six months following the last month of the previous certification period.

D. Determining a household's eligibility and food stamp benefit amount:

(1) **Income received weekly, bi-weekly, semi-monthly or monthly:** The household must submit and the department shall accept as verification the income received from any consecutive 30 day period

that includes 30 days prior to the month the report is due and the month the report is due.

(2) **Income received more frequently than weekly:** For households with income received more often than weekly:

(a) exact income rather than averaged and converted income shall be used to determine eligibility and food stamp benefit amount; and

(b) the household must submit, and the department shall accept as verification income received from any consecutive 30 day period that includes 30 days prior to the month the semiannual report is due and the month the report is due.

(3) If a determination is made that the use of the pay data for the budgeting methods described in (1) and (2), above, does not give the most accurate estimate of monthly earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

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

(5) Self-employment:

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

(b) A household assigned to semiannual reporting that has its self-employment income annualized shall be required to report changes in self-employment income on the semiannual report if the household has filed a tax return after its last approval or recertification of food stamps.

(c) A household assigned to semiannual reporting whose self-employment income is not annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner.

(i) When a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the six-month period covered by the semiannual report.

(ii) **Seasonal income:** Self-employment income that is intended

to meet a household's needs for only part of the year shall be averaged over the time the income is intended to cover.

(d) A household that fails to provide verification of an allowable deduction shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

(6) Use of conversion factors:

~~[(a) Conversion factors shall be used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:~~

~~(i) the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and~~

~~(ii) biweekly amounts by 2.15;~~

~~(iii) semi-monthly amounts by 2.~~

~~(b) Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received.~~

~~(c) The amount of the extra paycheck is averaged over the certification period.~~

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

Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(a) income received on a weekly basis is averaged and multiplied by 4.0;

(b) income received on a biweekly basis is averaged and multiplied by 2.0;

(c) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

(7) Effective April 1, 2010, changes to earned and unearned income shall be calculated using the conversion factors at Subsection D of 8.139.120.10 NMAC provided new income is reported to the agency and verified by the household. All other households will have the income calculated at the next interim report or recertification.

(a) Recertification and interim reports submitted prior to April 1, 2010, but processed in April 2010 or later shall be processed using the March 2010 income conversion methodology.

(b) Changes to earned or unearned income reported prior to April 1, 2010, but

processed in April 2010 or later shall be processed using the income conversion methodology applicable for the benefit month being processed.

E. Time limits for processing a semiannual report received by the county office:

(1) The semiannual report form and all verification provided shall be reviewed for completeness within 10 working days of receipt.

(a) A form that is complete and all verifications are provided, shall be processed within 10 working days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the semiannual report is due shall be processed as part of the semiannual report.

(d) A deduction that is verified in the month after the semiannual report is due shall be processed as a change reported by the household.

(2) Incomplete semiannual report is received:

(a) A semiannual report form that is not signed shall be returned to the household for a signature.

(b) A semiannual report that is incomplete because required verification is not provided shall not be returned to the household. The household shall be notified that the form is incomplete and what information must be provided to complete the semiannual report.

(3) A household must return the completed semiannual report form by the end of the month in which the report is due in order to process the report for the following month.

F. A household that fails to submit a semiannual report by the end of the month in which the report is due shall lose its right to uninterrupted benefits and shall be issued an adequate notice of closure.

G. Information requirements for the semiannual report: The semiannual report form shall specify:

(1) the deadline date to submit the form to ensure uninterrupted benefits if the household is determined eligible;

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

(3) that verification of some allowable expenses may be required in order for the deduction to be allowed;

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

(5) the consequences of providing incorrect information;

(6) the notice of rights.

H. Disaster victims: A household participating in the food stamp program and subject to semiannual reporting shall be required to comply with semiannual reporting requirements during the disaster period. The household remains responsible for submitting the required information set forth in 8.139.120.9 NMAC, to the field office that handles its ongoing case.

I. Reporting requirement for semiannual reporting households: A household assigned to semiannual reporting shall only be required to report when the household's gross income exceeds [130% of] the federal poverty guidelines for the size of the household. A household is required to report the change no later than 10 calendar days from the end of the calendar month in which the change occurred.

J. Action on changes reported between reporting periods for households assigned to semiannual reporting:

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

~~[(a)]~~ (1) a household not entitled to CE reports income in excess of 130% of federal poverty guidelines for the size of the household;

(2) a household entitled to CE reports income in excess of 165% of federal poverty guidelines for the size of the household;

~~[(b)]~~ (a) a household reports or HSD receives documented evidence that the household has moved or intends to move out of the state on a specific date;

~~[(c)]~~ (b) a household requests closure;

~~[(d)]~~ (c) HSD receives documented evidence that the head of household has died; or

~~[(e)]~~ (d) a household that fails to comply with work requirements as specified at 8.139.410.12 and 8.102.620.10 and 11 NMAC.

~~[(2)]~~ (3) A newborn shall be added to the household effective the month following the month the change is reported, if the addition is reported to the agency by the household or by the hospital for medicaid purposes.

~~[(3)]~~ (4) The loss of earned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification, whichever is first, provided that:

(a) the loss of income was reported and verified by the household;

(b) the loss of income was not due to voluntary quit.

[(4)] (5) The loss of unearned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that the loss of income was reported to the agency, and verified by the household.

K. Transitional food stamps: A household assigned to semiannual reporting that is approved for transitional food stamps shall have the semiannual reporting requirements terminated during the transitional food stamp benefit period.

L. Action on cash assistance applications:

(1) A food stamp household assigned to semiannual reporting that is later approved for cash assistance shall be required to file the scheduled semiannual report or to recertify eligibility at the intervals set at initial food stamp application. The timing of the cash certification and semiannual reporting requirements shall be set to match the requirements of the food stamp program.

(2) A household assigned to semiannual reporting that is approved for TANF, GA, or EWP a day or more after food stamp approval shall have food stamp benefits adjusted in the month following the month of cash assistance approval.

[02/01/95, 07/01/98; 8.139.120.10 NMAC - Rn & A, 8.139.120.9 NMAC, 02/14/2002; A, 01/01/2004; A/E, 10/15/2008; A, 12/31/2008; A, 04/01/2010]

8.139.120.11 REQUIREMENTS FOR ANNUAL REPORTING HOUSEHOLDS:

A. Household responsibilities at application: An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview. Changes occurring after the interview must be reported by the household subject to the annual reporting requirements in this section.

B. Reporting requirements for annual reporting households: A household subject to annual reporting shall be required to file an annual report no later than the tenth day of the twelfth month of the 24-month certification period. The following information, along with verification, must be provided with the report:

(1) any change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(2) the gross monthly income received from employment by each household member;

(3) the gross monthly unearned income received by each household member;

(4) changes in countable resources

if the total of all countable resources for the food stamp household exceeds the applicable resource limit, such as but not limited to:

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

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

(5) dependent care expenses;

(6) expenses for shelter, utilities, and telephone, only if a change has occurred since the last certification, or a change will occur in the month following the month the report is due, including but not limited to:

(a) a change in residence;

(b) a change in shelter expense;

(c) a change in billing for utilities, but not including variances in utility bills from month to month for the same service; or

(d) an increase in shelter expenses that will take place in the month following the report month; or

(e) a termination of any shelter, utility, or telephone expense; or

(f) a new shelter or utility expense;

(7) a change in medical expenses;

(8) a change in child support obligations;

(9) student status for anyone living in the home over the age of 17 years, including but not limited to:

(a) a change in status from non-college to college student;

(b) a change in status from college student to non-college status;

(c) a change in post-secondary curriculum to or from at least halftime; and

(d) participation in or termination of work study;

(10) a change in immigrant (alien) status for a household member.

C. Budgeting methodology for annual reporting at initial application and interim review:

(1) Prospective budgeting shall be used for an applicant household at initial application and at interim review as set forth at 8.139.500.9 NMAC.

(2) **Initial application:** At approval, eligibility and amount of payment for the applicant household shall be determined prospectively for the each of the first 12 months of the certification.

(3) **Recertification:** At approval, eligibility and amount of payment shall be determined prospectively for each of the 12 months following the last month of the previous certification period.

D. Budgeting methodology for processing an annual report:

(1) **Processing the annual report:** Eligibility and food stamp benefit amount shall be determined prospectively for the 12 months following the month the annual

report is due.

(2) Determining a household's eligibility and food stamp benefit amount:

(a) Income received weekly, bi-weekly, semi-monthly or monthly: the household must submit and the department shall accept as verification the income received from any consecutive 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

(b) **Income received more frequently than weekly:** For households with income received more often than weekly:

(i) exact income rather than averaged and converted income shall be used to determine eligibility and food stamp benefit amount; and

(ii) the household must submit, and the department shall accept as verification income received from any consecutive past 30 day period that includes 30 days prior to the month the semiannual report is due and the month the report is due.

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

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

(3) Use of conversion factors:

~~[(a) Conversion factors shall be used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:~~

~~_____ (i) the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and~~

~~_____ (ii) biweekly amounts by 2.15;~~

~~_____ (b) Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received;~~

~~_____ (c) The amount of the extra paycheck is averaged over the certification period;~~

~~_____ (4) Rounding of income when using conversion factors: Averaged income shall be rounded prior to the application of the conversion factor. If the cents are \$.49 or less, the cents are dropped. If the cents are~~

\$.50 or more, the amount shall be rounded up to the next higher dollar.]

Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(a) income received on a weekly basis is averaged and multiplied by 4.0;

(b) income received on a biweekly basis is averaged and multiplied by 2.0;

(c) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

(4) Effective April 1, 2010, changes to earned and unearned income shall be calculated using the conversion factors at Paragraph (4) of Subsection F of 8.102.120.11 NMAC provided new income is reported to the agency and verified by the household. All other households will have the income calculated at the next interim report or recertification.

(a) Recertification and interim reports submitted prior to April 1, 2010, but processed in April 2010 or later shall be processed using the March 2010 income conversion methodology.

(b) Changes to earned or unearned income reported prior to April 1, 2010, but processed in April 2010 or later shall be processed using the income conversion methodology applicable for the benefit month being processed.

E. Time limits for annual report received by the county office:

(1) The annual report form and all required verification provided shall be reviewed for completeness within 10 working days of receipt.

(a) A form that is complete and all required verifications are provided, shall be processed within 10 working days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the annual report is due shall be processed as part of the annual report.

(d) A deduction that is verified in the month after the annual report is due shall be processed as a change reported by the household.

(2) Incomplete annual report is received:

(a) An annual report form that is not signed shall be returned to the household

for a signature.

(b) An annual report that is incomplete because required verification is not provided shall not be returned to the household. The household shall be notified that the form is incomplete and what information must be provided to complete the semiannual report.

(3) A household must return the completed annual report form by the end of the month in which the report is due in order to process the report for the following month.

F. A household that fails to submit an annual report by the end of the month in which the report is due shall lose its right to uninterrupted benefits and shall be issued an adequate notice of closure.

G. **Information requirements for the annual report:** The annual report form shall specify:

(1) the deadline date to submit the form to ensure uninterrupted benefits if the household is determined eligible;

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

(3) that verification of some allowable expenses may be required in order for the deduction to be allowed;

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

(5) the consequences of providing incorrect information;

(6) the notice of rights.

H. **Disaster victims:** A household participating in the food stamp program and subject to annual reporting shall be required to comply with annual reporting requirements during the disaster period. The household remains responsible for submitting the required information set forth in 8.139.120.11 NMAC, to the field office that handles its ongoing case.

I. **Reporting requirement for annual reporting households:** A categorically eligible household assigned to annual reporting shall have no further reporting requirement, until they must file an annual report or recertify, whichever comes first. All other households must file a report if their income exceeds 130% of the federal poverty guidelines and if the household remains eligible have no further reporting requirement until the household must file an annual report or recertify, whichever comes first. A household is required to report the change no later than 10 calendar days from the end of the calendar month in which the change occurred.

J. **Action on changes reported between reporting periods for households assigned to annual reporting:**

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

(a) a household not entitled to

categorically eligible reports income in excess of 130% of federal poverty guidelines for the size of the household;

(b) a household [~~with elderly or disabled members~~] entitled categorically eligible reports income in excess of 165% of federal poverty guidelines for the size of households;

(c) household reports or HSD receives documented evidence that the household has moved or intends to move out of the state on a specific date;

(d) a household requests closure;

or
(e) HSD receives documented evidence that the head of household has died.

(2) The loss of unearned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that the loss of income was reported to the agency, and verified by the household.

(3) If a household reports a change that makes them ineligible for annual reporting, they shall be assigned an alternative reporting period when they file an annual report or recertify, whichever comes first.

[02/01/95; 8.139.120.11 NMAC - Rn & A, 8.139.120.10 NMAC, 02/14/2002; 8.139.120.11 NMAC - N/E, 10/15/2008; A, 12/31/2008; A, 04/01/2010]

8.139.120.12 REQUIREMENTS FOR HOUSEHOLDS ON REGULAR REPORTING:

A. A regular reporting household includes all households not assigned to simplified reporting. If changes occur during a households certification period, that affect eligibility or benefit amount, the caseworker shall take action to adjust the household's eligibility or food stamp benefit amount.

B. Benefit determinations or changes on or after April 1, 2010, to earned and unearned income shall be calculated using the conversion factors at Paragraph (6) of Subsection D of 8.139.120.10 NMAC provided income is reported to the agency, and verified by the household. All other households shall have their income calculated at the next interim report or recertification.

[B:]C. Household responsibilities:

(1) **At application:** An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview.

(2) Changes occurring after the interview, but before the date of the approval notice, must be reported by the household

within 10 days of the date the household receives its approval notice.

(3) Reporting during the certification period: A household must report changes within 10 days of the date a change becomes known to the household. No change reporting requirements may be imposed except as provided in (a) through (f) below. A household must report:

(a) earned income: a change in the source of earned income, including starting or stopping a job; or

(i) changing jobs if the change in employment results in a change in income;

(ii) a change in the amount of gross earned income received by a member of the household, if the amount changes by more than \$100 per month.

(b) unearned income:

(i) a change in the source of unearned income;

(ii) a change of more than \$50 in the amount of unearned income except that changes in cost of living increases (COLAs), and mass changes in the social security and SSI benefits and changes in cash assistance amounts in programs administered by ISD including TANF, GA, EWP, and RRP do not have to be reported;

(c) changes in household composition, such as when an individual moves into or leaves the household;

(d) changes in residence and the resulting change in shelter costs;

(e) when cash on hand, stocks, bonds or money in a bank account reach or exceed \$2,000, or \$3,000 for elderly/disabled households;

(f) changes in the legal obligation to pay child support, including termination of the obligation; a household with less than a 3-month record of child support payments shall be required to report changes greater than \$50.00 from the amount used in the most recent certification action.

(4) Time limits:

(a) The 10-day period begins with the date the change becomes known to the household. For the purposes of reporting:

(i) a financial change shall be considered as timely if the change is reported no later than 10 days after the household receives the first payment or makes the first payment attributable to the change;

(ii) a non-financial change shall be considered timely if the change is reported no later than 10 days after it occurs.

(b) The change is considered reported on the date the report of change is received by the local county office or, if mailed, the date of the postmark on the household's report plus three days mailing time.

(c) Households shall be

encouraged to use a change report form to document changes, although changes may also be reported by personal visit or telephone.

(d) In the absence of a written report, a 13-day advance notice is required if the change will result in a reduction or termination of benefits.

[E.]D. HSD responsibilities:

The caseworker shall inform the household of its responsibility to report changes. The caseworker shall review any change reported by the household to determine if the change must be acted on and shall take the required action if the change affects eligibility or benefit amount. The caseworker shall document the date a change is reported, and whether the change affects eligibility or food stamp benefit amount.

(1) Action on changes for regular reporting households:

(a) When a household reports a change, the caseworker shall take action to determine the household's eligibility or food stamp benefit amount within 10 days of the date the change is reported.

(b) For changes that result in a decrease or termination of household benefits, the caseworker shall act on the change as follows:

(i) If the caseworker receives a written report from the household that meets the standards of Subsection C of 8.139.120.15 NMAC, action shall be taken for the following month without an advance notice of adverse action. The household shall be provided with adequate notice. If the certification period will expire before the expiration notice time limit, no action shall be required to reduce or terminate benefits.

(ii) If the change is reported by any other means, e.g., by phone, in person, etc., within 10 days, the caseworker shall take action to issue a notice of adverse action (Subsection B of 8.139.120.15 NMAC) to reduce or terminate benefits effective the month following the month the adverse action time limit expires. If the certification period will expire before the expiration of the adverse action time limit, no action shall be required to reduce or terminate benefits.

(c) During the certification period, the caseworker shall not act on changes in medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, requires the caseworker to contact the household for verification. The caseworker shall act only on those changes in medical expenses that are learned about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) Increased benefits:

(a) For changes resulting in an

increase, other than changes described in (b) below, the caseworker shall make the change effective no later than the first benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date).

(b) For changes resulting in an increase in food stamp benefits because of the addition of a new household member who is not a member of another certified household or a decrease of \$50.00 or more in the household's gross monthly income, the caseworker shall make the change effective not later than the first food stamp benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date). In no event shall these changes take effect any later than the month following the month the change was reported. If the change is reported timely but the increase cannot be made effective the following month, the caseworker shall issue a supplement to the household in the following month.

(c) Providing verification: The household shall be allowed 10 days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If necessary verification is not provided at the time a change is reported, the household shall be allowed 10 days, plus 3 days if a notice is mailed, to provide verification. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its food stamp benefit amount shall revert to the original benefit amount.

(3) Decreased benefits: When a household timely reports a change which will decrease benefits, the caseworker shall issue an adverse action notice to the household (Subsection B of 8.139.120.15 NMAC). If the adverse action time limit expires in the following month, there is no overissuance in the following month and the household is entitled to the greater benefit amount. The decrease shall be effective in the month following the month the notice expires.

(4) Termination of benefits: When the household reports a change that will result in a termination of benefits, the caseworker shall issue an adverse action notice.

(a) If the adverse action time limit expires in the following month, there is no overissuance to the household in the following month and the household shall be entitled to the greater benefit amount. No claim shall be filed.

(b) If the adverse action time limit will expire after the certification period ends,

action shall be taken to terminate benefits; the certification period shall be allowed to expire. The caseworker shall document the change in the case record.

(5) No change in food stamp benefit amount: When a reported change has no effect on the food stamp benefit amount, the caseworker shall document the change in the case file and notify the household of the receipt of the report and that there is no change in food stamp benefits.

~~(D.)E.~~ Failure to report changes:

(1) If the caseworker discovers that the household failed to report a change as required, the caseworker shall evaluate the change to determine whether the household received benefits to which it was not entitled. After verifying the change, the caseworker shall initiate a claim against the household for any month in which the household was overissued food stamp benefits. The first month of the overissuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Paragraph (2) of Subsection B of 8.139.120.12 NMAC above.

(2) Increased benefit amount: When a household fails to make a timely report of a change which will result in an increased food stamp benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 days after the date the change was reported.

~~(E.)E.~~ Other changes:

(1) Eligibility standard: When a household becomes entitled to a different eligibility standard, the caseworker shall apply the new standard whenever there is a change in household eligibility, benefit amount, or certification period, whichever occurs first.

(2) Reconstituted household: If members in the household separate into two or more households, the individuals who left the original household shall not be eligible for separate status in the month the change occurs. An adverse action notice is required whenever members leave the household. If the adverse action time limit expires in the month the change occurs, the individuals in the reconstituted household may be certified in the month following the month the change occurs. If the notice of adverse action time limit expires in the month following the month the change occurred, the reconstituted

household shall not be certified until the month following the month the notice time limit expires.

(3) Shortened certification period: Whenever a determination is made that a household's certification period must be shortened, the household is entitled to an expiration notice. A household shall be informed that its certification period shall end the month following the month the expiration notice is sent. The household shall be given an opportunity to timely reapply for benefits.

(4) Unreported changes: The caseworker shall act on all changes of which the caseworker becomes aware. At a minimum, this means documenting changes in the case record. All discrepancies and questionable information shall be resolved to make sure that the correct food stamp benefit amount is issued to the household.

[05/15/97; 8.139.120.12 NMAC - Rn & A, 8.139.120.11 NMAC, 02/14/2002; 8.139.120.12 NMAC - Rn & A/E, 8.139.120.10 NMAC, 10/15/2008; A, 12/31/2008; A, 04/01/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.410 NMAC, Sections 12, 13 and 14, effective April 1, 2010.

8.139.410.12 EMPLOYMENT, TRAINING AND WORK REGISTRATION

~~[A.] E & T work registration:~~ Compliance with work registration is a prerequisite to certification and cannot be waived. Benefits may not be conditionally granted before registration of all mandatory household members, except when verification cannot be obtained prior to the expedited service time limit. Work registration exemptions must be verified before certification.

~~B. Compliance with E & T work requirements:~~ As a condition of eligibility for food stamps, every physically or mentally fit household member who is 16 years of age or older and under age 60, and who is determined mandatory, must comply with the work requirements of the food stamp E & T program.

~~C. General conditions for participation:~~ No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the FSP if the individual:

~~(1)~~ refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by ISD;

~~(2)~~ refuses without good cause to

participate in an employment and training program, to the extent required by ISD;

~~(3)~~ refuses without good cause to accept an offer of employment at a site or plant not subject to a strike or lockout, at a wage not less than the higher of:

~~(a)~~ the applicable federal or state minimum wage; or

~~(b)~~ 80% of the wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment.

~~(4)~~ refuses without good cause to provide ISD with sufficient information to allow ISD to determine the employment status or the job availability of the individual;

~~(5)~~ voluntarily and without good cause:

~~(a)~~ quits a job of 30 hours or more a week or a job that provided weekly earnings at least equivalent to the federal minimum wage multiplied by 30 hours; or

~~(b)~~ reduces work effort, and after the reduction, the individual is working less than 30 hours a week; or

~~(c)~~ fails to comply with the requirements of a workfare program.

~~(6) Strike against the government:~~ An employee of the federal government, or state or a political subdivision of the state, who is dismissed for participating in a strike against the federal government, state or political subdivision of the state, will be considered to have voluntarily quit without good cause.

~~(7) Title IV-A/unemployment compensation benefit (UCB) participants:~~ Individuals who fail or refuse to comply with the requirements under Title IV-A of the Social Security Act, or work requirements for individuals receiving UCB, will be considered to have failed to comply with food stamp program E & T work requirements.

~~D. Employment and training (E & T) work requirements:~~

~~(1) General conditions for registration:~~

~~(a)~~ Unless exempt, every household member age 16 through 59 must register for employment. If a household member has his/her 16th birthday within a certification period, the work registration requirement must be fulfilled as part of the next scheduled recertification process, unless the member qualifies for an exemption.

~~(b)~~ An individual who does not qualify for an exemption must be registered for employment at initial certification, or when added to the food stamp household, and at least every twelve (12) months thereafter, as a condition of eligibility.

~~(c)~~ An individual required to register need not be present during the registration process.

~~(d)~~ Strikers whose households are eligible to apply for assistance, as defined

in Subsection B of 8.139.400.11 NMAC, must register for work, unless covered by an exemption:

— (e) Individuals exempt from registration may volunteer to participate in the E & T program:

— (2) **Individuals exempt from registration:** The following individuals are exempt from the work registration requirement:

— (a) an individual younger than 16 years of age or an individual 60 years of age or older;

— (b) an individual age 16 or 17 who is not the head of household or is attending school or enrolled in an employment and training program at least half time, as defined by the school or employment and training program;

— (c) an individual who is physically or mentally unfit for employment; if physical or mental unfitness is claimed but not evident, verification is required; verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or a statement from a physician or licensed or certified psychologist;

— (d) a parent or other household member who is responsible for the care of a dependent child under age 6 or an incapacitated person:

— (i) if the child has his/her 6th birthday during the certification period, the individual responsible for the care of the child is required to be registered as part of the next scheduled recertification, unless the individual qualifies for another exemption;

— (ii) the exemption applies to the person who actually provides the care;

— (iii) the dependent child or incapacitated person need not be considered a member of the food stamp household or even reside with the household; the exemption will not apply if the dependent or incapacitated person resides with others who provide the care;

— (e) an individual subject to and complying with any work requirement under Title IV of the Social Security Act, including TANF work requirements;

— (f) an individual who receives unemployment compensation benefits and is subject to and complying with a federal or state unemployment compensation system; an individual who has applied for but who has not yet received UCB is exempt if required to register with the department of labor as part of the unemployment compensation application process;

— (g) an individual who is a regular participant in a drug or alcohol treatment and rehabilitation program; the program must qualify for state certification as an effective rehabilitation program;

— (h) an individual who is employed

or self-employed and working a minimum of thirty (30) hours a week or receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

— (i) migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days are exempt, although this does not prevent such individuals from seeking services from the E & T program;

— (ii) workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage;

— (i) a student who is eligible to participate in the FSP, and who is enrolled at least half time in any recognized school, high school, training program, or institution of higher education; this exemption remains in effect during normal periods of class attendance, vacations, and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer session);

— (j) a household member who has made application for SSI and food stamp benefits at the social security administration; and whose application for food stamp benefits has been received by HSD; and who is determined eligible for food stamp benefits, shall be exempt from work registration until an SSI determination is made; a household member who is determined ineligible for SSI shall have the exemption from E & T work requirements evaluated at the time of the denial of SSI.

(3) **Interim changes in status:**

— (a) Anyone losing exempt status because of changes subject to the reporting requirements in Paragraph 2 of Subsection A of 8.139.120.9 NMAC, will be required to register when the change is reported.

— (b) Anyone gaining or losing exempt status because of changes not subject to the reporting requirements in Paragraph 2 of Subsection A of 8.139.120.9 NMAC, will have his/her work status evaluated at the next recertification.

(4) **Processing changes:**

Mandatory work participants who move out of a project area retain their work registration status at their new location, unless they become exempt.

(5) **Residing in a non-work program county:**

— (a) The appropriate work registration code of any individual living in a project area which does not administer a work program through income support division, and who is not exempt from E & T work registration, will be entered into the individual's computer file. Those individuals will be dropped from referral to the E & T work program.

— (b) Any household member living in a non-work program area may volunteer to participate in the E & T work program. The nearest project area administering a work program through ISD will accept the participant.

— **E. E & T work program and responsibilities:** The income support division (ISD) administers the work program for applicants for and recipients of food stamp benefits who are required to comply with E & T work requirements. The purpose of the work program is to assist household members participating in the FSP to gain skills, training, work, or work experience that will increase an individual's ability to obtain and/or keep employment.

— (1) **Work registrant responsibilities:** Each household member who must be registered for work is required to:

— (a) register at the time of initial application and every 12 months thereafter;

— (b) participate in the E & T work program to the extent required by ISD;

— (c) respond to any request from ISD or its designee for sufficient information to determine employment status or availability for work;

— (d) report to an employer if referred by ISD or its designee;

— (e) accept an offer of employment, at a site or plant not subject to a strike or lockout, at a wage not less than the higher of:

— (i) the applicable federal or state minimum wage; or

— (ii) 80% of the wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) been applicable to the offer of employment.

— (2) **HSD responsibilities:** HSD is responsible for:

— (a) screening each household member to determine work registration status;

— (b) registering mandatory participants;

— (c) explaining to each applicant FSP work requirements, rights and responsibilities and consequences for failure or refusal to comply; such information must be provided at application, at recertification, and when a previously exempt or new household member must be registered;

— (d) acting on any notice of noncompliance.

— (i) Within 10 days of receiving notification that a mandatory work participant is in noncompliance with a work requirement the caseworker will determine if good cause exists for the individual's failure to comply.

— (ii) Upon a finding that good cause does not exist, a notice of adverse action will be issued, advising the household

of the individual's disqualification:

(iii) The reduced benefit amount resulting from the disqualification will be reported to the E & T work program:

(e) disqualifying non-compliant individuals, and reinstating individuals whose penalty expires, or who are subsequently determined to meet an exemption in Paragraph 2 of Subsection D of 8.139.410.12 NMAC:

(3) **Reporting changes to the E & T work program:** The following changes will be reported to the E & T work program:

(a) work participants who become exempt from work registration;

(b) work participants who are no longer certified for participation;

(c) work participants who move from the project area; and

(d) voluntary work participants who are deregistered:

(e) In most cases, the changes listed above are reported by entering the appropriate information into the household's computer file. In some cases, a manual form is used to report new information to the work program:

(4) **Work program responsibilities:**

(a) **scheduling and conducting assessment sessions:** the work program will inform each registrant or participant of:

(i) E & T work program requirements, including rights and responsibilities;

(ii) services, benefits, and consequences of failure to comply;

(b) **placing a participant in a work activity:** a participant may be placed in any work activity deemed appropriate by the work program; the work program has the discretion to exempt a work participant from participation based on the guidelines in the state plan for the work program;

(c) authorizing reimbursements up to the regulatory monthly limit for reasonable and necessary costs directly related to work program participation;

(d) reporting voluntary work participants who wish to de-register;

(e) reporting within 10 days of the date a determination is made that an individual has failed or refused to comply with E & T work requirements:

F. **Voluntary quit/reducing work hours:** When a household reports a loss of income or reduction in work hours, a determination must be made whether any member has voluntarily quit a job or reduced work hours without good cause:

(1) **Period for establishing voluntary quit or a reduction in work hours:** A determination of voluntary quit or reduction in work hours shall be made within the 60 day period prior to the household's application date, or any time

after filing an application, or any time during the household's certification period:

(2) **Verification requirements:** Verification of the circumstances surrounding the quit or reduction in work hours is required. Verification is mandatory for all individuals participating in the food stamp program. Benefits may not be conditionally granted pending verification of voluntary quit or reduction in work hours, except when verification cannot be obtained prior to the expedited service time limit:

(3) **Providing verification:** The primary responsibility for providing verification of the circumstances surrounding a quit or reduction in work hours rests with the household:

(a) Acceptable sources of verification include, but are not limited to: the employer at the time of quit, employee associations, union representatives, grievance committees or organizations:

(b) If documentary evidence cannot be obtained, a collateral contact may be used. The ISS will obtain verification from acceptable collateral contacts provided by the household:

(c) If the household and ISS are unable to obtain requested verification because the reason for the quit or reduction in work hours resulted from circumstances that cannot be verified for good cause, the ISS will use the best source of information available. The household will not be denied access to the FSP:

(d) Circumstances which cannot be verified for good cause may include a refusal by an employer to provide information; discriminatory practices or unreasonable demands by an employer, or an inability to locate the employer:

(4) **Applicant households:** In the case of an applicant household, if any household member subject to food stamp E & T work requirements voluntarily quit a job or reduced work effort, that individual shall be disqualified according to Paragraph 1 of Subsection H of this section. The disqualification is effective upon a determination of eligibility for the remaining household members:

(5) **Participating households:** In the case of a participating household, if a household member is determined to have voluntarily quit a job or reduced work effort without good cause, that individual shall be disqualified according to Paragraph 1 of Subsection H of this section. The disqualification is effective the first month following the expiration of the notice of adverse action time limit:

G. **Suitability and good cause:** The ISS must make a determination whether there was good cause for the voluntary quit or reduction in work hours. Individuals determined to have good cause will be registered for work and must comply

with E & T work requirements, unless an exemption in Paragraph 2 of Subsection D of 8.139.410.12 NMAC is met. For purposes of determining suitability of employment and good cause for noncompliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the following considerations may be evaluated:

(1) **Unsuitable employment:** In addition to any suitability requirements established under the E & T work program, employment is not considered suitable if:

(a) the wage offered is less than the higher of:

(i) the applicable federal or state minimum wage; or

(ii) 80% of the federal minimum wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 been applicable to the offer of employment;

(b) the employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in (a);

(c) the household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization;

(d) the work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act [29 U.S.C. 178] commonly known as the Taft-Hartley Act, or unless an injunction has been issued under Section 10 of the Railway Labor Act [45 U.S.C. 160];

(e) the degree of risk to health and safety is unreasonable;

(f) the member is physically or mentally unfit to perform the job duties, as documented by medical evidence or by reliable information from other sources;

(g) the employment offered within the first thirty (30) days is not in the member's major field of experience;

(h) the distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting; employment is not considered suitable if daily commuting exceeds two (2) hours per day, not including transporting a child to and from a child care facility; nor is employment considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site;

(i) the working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs; for example, a sabbatarian may refuse to work on the Sabbath:

(2) Good cause for noncompliance with E & T work requirements: The work program will report registrants or participants who fail or refuse to comply with E & T work requirements. The HSD has the primary responsibility to determine whether good cause exists for a failure or refusal to comply.

(a) Good cause is determined by considering the facts and circumstances involved, including information submitted by the household member and employer.

(b) Good cause includes circumstances beyond an individual's control, such as, but not limited to:

(i) registrant or participant household member's illness;

(ii) illness of another household member requiring the presence of the registered or participating member;

(iii) household emergency;

(iv) problems caused by registrant's or participant's inability to speak or read English;

(v) unavailability of transportation; or

(vi) lack of adequate child care for children who have reached age six but are under age 12.

(3) Good cause for voluntary quit/reducing work hours: Good cause includes the following and must be evaluated on a case-by-case basis:

(a) circumstances beyond the individual's control, such as those that prevent compliance with E & T work requirements as described in Paragraph 2 of Subsection G of 8.139.410.12 NMAC;

(b) resigning from a job that does not meet the criteria used to establish suitable employment in Paragraph 1 of Subsection G of 8.139.410.12 NMAC;

(c) discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;

(d) work demands or conditions that make continued employment unreasonable, such as working without being paid on schedule;

(e) enrollment of an individual at least half-time in a recognized school, training program, or institution of higher education which requires the individual to leave employment, or which requires the household to move to another county or political subdivision;

(f) resignations by individuals under age sixty (60) which are recognized by the employer as retirement;

(g) acceptance of a bona fide offer of employment of more than twenty (20) hours per week in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours, which because of circumstances beyond the control

of the individual, subsequently either does not materialize or results in employment of less than twenty (20) hours per week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours;

(h) leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm workers or construction workers; even though work at the new site has not actually begun, quitting previous employment is considered to be for good cause if it is part of the pattern of that type of employment.

H. Disqualification for noncompliance: No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the food stamp program if the individual fails or refuses, without good cause, to comply with work requirements in Subsection C of 8.139.410.12 NMAC.

(1) Individual disqualification: Any individual who is required to comply with E & T work requirements, and fails or refuses to comply with the work requirements, or who voluntarily quits a job, or reduces work hours without good cause will be disqualified as follows:

(a) first occurrence: until compliance or for three (3) months, whichever is later;

(b) second occurrence: until compliance or for six (6) months, whichever is later;

(c) third occurrence: until compliance or for one (1) year, whichever is later.

(2) Treatment of income and resources:

(a) All the income and resources of an individual disqualified for noncompliance with work requirements will be counted to determine the household's income and resource maximum levels, and benefit amount (see Subsection C of 8.139.520.10 NMAC).

(b) In the case of an applicant household, where there has been a determination of voluntary quit or reduction in work hours without good cause within 60 days prior to the application date, the earned income lost as a result of the quit or reduction in hours shall not be counted.

(c) When a determination is made that a household member has voluntarily quit or reduced work hours without good cause after an application is filed, but before approval, the earned income of the disqualified individual that would have been countable at application shall be calculated and used to determine the eligibility and benefit amount of the remaining household members.

(d) In the case of a participating household, where there has been a

determination of voluntary quit or reduction in work hours without good cause, the department shall ensure that, as a result of the individual disqualification:

(i) the household's food stamp benefits do not increase for the length of the disqualification period;

(ii) the household's food stamp benefit amount for the length of the disqualification period is calculated by using the disqualified individual's income prior to the quit or reduction; and

(iii) the household will be issued the lesser of the food stamp benefit amount the household is eligible for prospectively or the food stamp benefit amount the household was receiving prior to the individual's disqualification.

(c) Any reported change that does not relate to the individual disqualification shall be processed after the appropriate determination in (a), (b) or (c) or (d) above is made. Food stamp benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC.

(3) Determining the disqualification period:

(a) At application: An individual who is a member in an applicant household, and who is in a prior disqualification period, will be denied food stamp benefits beginning with the month of application.

(b) During participation: An individual who has failed or refused to comply with work requirements while participating in the FSP will be ineligible to participate beginning with the month following the month in which the notice of adverse action time limit expires.

(c) Semiannual reporting households: An individual who has failed or refused to comply with work requirements during a semiannual reporting period, shall be ineligible to participate beginning with the month following the month the notice of adverse action time limit expires. If the adverse action time limit will expire in the month after the notice would have been sent, the caseworker must wait until the first day of the following month to send the notice of adverse action.

(4) Disqualification in the last month of certification: For all participating households, including households subject to semiannual reporting:

(a) If a notice of noncompliance is received in the last month of the certification period, an adverse action notice will be sent to the household. The disqualification period begins the first month following the month the adverse action time limit expires, whether or not the household reappplies for food stamp benefits. If the household subsequently reappplies, either in the last month of the certification period or after the certification period has expired, the

individual disqualification will continue for the duration of the appropriate penalty period.

(b) If the adverse action time limit expires in the last month of the household's certification period, the disqualification penalty will begin the following month; whether or not the household reapplies for food stamp benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(5) Lifting the disqualification:

An individual who has been disqualified may resume participation during the disqualification period by becoming exempt from E & T work requirements listed in Paragraph 2 of Subsection D of 8.139.410.12 NMAC, if otherwise eligible.

I. Head of household provisions:

(1) **Designation:** The household may designate any adult parent of a child in the household as the head of household, if all adult household members making application agree to the selection. A household may designate the head of household each time the household is certified for participation in the FSP but may not change the designation during a certification period, unless there is a change in household composition.

(2) **Compliance with E & T work requirements:** For purposes of determining compliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the head of household will be considered as an individual household member. The head of household will be disqualified in accordance with the disqualification penalties in Paragraph 1 of Subsection H of 8.139.410.12 NMAC.

(a) If the head of household leaves the household during a period of ineligibility, the disqualification follows the individual. The remaining household members, if otherwise eligible, continue to be eligible to participate in the FSP.

(b) If the head of household becomes the head of another household, the individual disqualification continues to apply. The other household members continue to be eligible to participate in the FSP.

J. Work requirement for able bodied adults without children (ABAWDs):

An applicant or recipient who is a mandatory work participant in the food stamp E & T program shall be considered for compliance with the 20-hour-a-week work requirement for ABAWDs. Unless determined exempt, any individual who is a mandatory ABAWD shall be required to comply with the 20-hour-a-week work requirement to maintain eligibility for food

stamp benefits:

(1) **Exemptions:** Certain individuals are exempt from the ABAWD 20-hour-a-week work requirement:

(a) an individual determined to be exempt from work requirements of the Food Stamp E & T program set forth at Subsection D of this section;

(b) an individual under age 18 or age 50 or older;

(c) an individual medically certified as physically or mentally unfit for employment;

(d) a pregnant woman;

(e) an individual residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits;

(f) a natural, adoptive or step-parent residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits.

(2) **Medical reports:** To determine an exemption from the 20-hour-a-week work requirement on the basis of pregnancy or physical or mental unfitness, the individual must provide a written report by a medical practitioner such as a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist or social worker.

(a) In the case of a pregnancy, the report must verify the pregnancy and identify the expected date of delivery.

(b) A claim of physical or mental unfitness must be substantiated by a written report identifying the physical or mental condition and certifying that the person is unfit for employment.

(3) **Time limited eligibility for ABAWDs:** An ABAWD who is determined mandatory to comply with the 20-hour-a-week work requirement shall not be eligible to participate in the food stamp program as a member of any household if the individual received food stamp benefits but failed to comply with the 20-hour-a-week work requirement for three countable months in a 36-month period.

(a) **36 month period:** The 36 month period is a fixed calendar month period beginning on December 1, 2002. The period ends on November 30, 2005.

(b) **Countable months in the 36-month time limit:** Within the fixed 36-month period, an ABAWD shall have a month counted toward the three-month time limit if the 20-hour-a-week work requirement is not met and the household received a full month's benefits.

(i) In no event shall a month be counted toward the three-month time limit if the individual has not attained the age of 18.

(ii) A month that an

ABAWD has used without fulfilling the work requirement in another state shall be counted toward the three-month time limit as long as the other state verifies the month has been used as a non-work month.

(4) Fulfilling the 20-hour-a-week work requirement:

(a) **Working:** For purposes of determining the activities that count towards the 20-hour-a-week work requirement, the time spent working in exchange for money; or working in exchange for goods or services; or unpaid work; or any combination of these activities shall be considered as employment and credited toward the 20-hour-a-week work requirement.

(b) **Work activities:** Allowable work activities that count towards the 20-hour-a-week work requirement include:

(i) employment for at least 20 hours a week averaged monthly or 80 hours a month, but not unreported employment; in the case of self-employment income, gross monthly earnings, as determined under Paragraph 2 of Subsection E of 8.139.520.10 NMAC, are divided by the minimum wage to determine the number of hours that are countable in meeting the work requirement;

(ii) participation in and compliance with the requirements of a work program at least 20 hours a week;

(iii) any combination of employment and participation in a work program for at least 20 hours a week;

(iv) job search or job search training activities that are incorporated into the department's a work program or another state or local program that meets food stamp E & T requirements as long as the job search or job search training activities equal less than half the work requirement;

(v) participation in and compliance with a workfare program.

(c) **Work program:** Allowable activities in a work program include those performed under:

(i) the Workforce Investment Act (Public Law 105-220);

(ii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(iii) the department's food stamp E&T program;

(iv) any other state or local program which is recognized by the department as meeting food stamp E&T program requirements.

(5) Reporting and verifying work participation:

(a) It is the responsibility of the individual subject to the work requirement to report:

(i) whether or not that individual has worked or participated in a work program;

(ii) the number of hours spent in work or work program activities;

(iii) how the work requirement was fulfilled; and

(iv) when the individual's work hours fall below 20 hours a week, averaged monthly, or 80 hours a month.

(b) Verification of the time spent working is mandatory in order to receive credit toward the work requirement. It is the responsibility of the individual subject to the work requirement to provide verification of participation in work activities by the fifth calendar day of each month following the month of participation in work activities.

(6) **Good cause for failure to meet the work requirement:** An ABAWD may establish good cause for failure to meet the 20-hour-a-week work requirement if the absence from work is temporary and the individual retains employment, or if participation in work activities resulted from a temporary absence due to circumstances beyond the individual's control. Good cause reasons include, but are not limited to; illness, illness of another household member requiring the presence of the ABAWD, a household emergency, or the unavailability of transportation. Good cause is established on an individual basis.

(7) **Regaining eligibility:** An individual who becomes ineligible due to failure to meet the work requirement for three months can regain eligibility by working or participating in an approved work program for at least 80 hours during any 30 consecutive day period following the date of ineligibility.

(a) An individual who regains eligibility is eligible on an ongoing basis provided he or she continues to meet the 20-hour-a-week work requirement.

(b) There is no limit to the number of times an individual may regain eligibility during the 36-month period.

(8) **Failure to meet the work requirement after regaining eligibility:** An individual who has regained eligibility and who subsequently fails to meet the 20-hour-a-week work requirement in any month left in the 36-month period shall be eligible to receive food stamp benefits for a three consecutive month period.

(a) The three-month period begins with the month the work requirement was not met, provided the individual is otherwise eligible.

(b) Upon expiration of the three months, the individual becomes ineligible for the remainder of the fixed 36-month period.

(c) The individual may re-establish eligibility by either regaining eligibility or because a determination is made that the individual becomes exempt from the 20-hour-a-week work requirement.

(9) **Costs:** Except for costs assumed by HSD pursuant to an approved food stamp E&T supportive services plan, HSD has no financial responsibility for any costs or liabilities incurred by persons electing to participate in a work program in order to meet the food stamp work requirement.]

A. Employment and training (E & T) work registration: Compliance with work registration is a prerequisite to certification and cannot be waived. Benefits may not be conditionally granted before registration of all mandatory household members, except when verification cannot be obtained prior to the expedited service time limit. Work registration exemptions must be verified before certification.

B. Compliance with E & T work requirements: As a condition of eligibility for food stamps, every physically or mentally fit household member who is 16 years of age or older and under age 60, and who is determined mandatory, must register for the E & T program.

C. Non-compliance with E&T work requirements: Non-compliance with E&T work requirements is considered to exist when an individual:

(1) refuses, at the time of application and every 12 months thereafter, to register for employment in a manner prescribed by ISD; or

(2) fails or refuses to comply with the requirements under Title IV-A of the Social Security Act, or work requirements for individuals receiving UCB.

D. E & T work requirements:

(1) **General conditions for registration:**

(a) Unless exempt, every household member age 16 through 59 must register for employment. If a household member has his/her 16th birthday within a certification period, the work registration requirement must be fulfilled as part of the next scheduled recertification process, unless the member qualifies for an exemption.

(b) An individual who does not qualify for an exemption must be registered for employment at initial certification, or when added to the food stamp household, and at least every 12 months thereafter, as a condition of eligibility.

(c) An individual will be considered registered once they have completed and signed an application and their case is approved.

(d) Strikers whose households are eligible to apply for assistance, as defined in Subsection B of 8.139.400.11 NMAC, must register for work, unless covered by an exemption.

(e) Individuals exempt from registration may volunteer to participate in

the E & T program.

(2) **Individuals exempt from registration:** The following individuals are exempt from the work registration requirement:

(a) an individual younger than 16 years of age or an individual 60 years of age or older;

(b) an individual age 16 or 17 who is not the head of household or is attending school or enrolled in an employment and training program at least half time, as defined by the school or employment and training program;

(c) an individual who is physically or mentally unfit for employment; if physical or mental unfitness is claimed but not evident, verification is required; verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or a statement from a physician or licensed or certified psychologist;

(d) a parent or other household member who is responsible for the care of a dependent child under age six or an incapacitated person;

(i) if the child has his/her sixth birthday during the certification period, the individual responsible for the care of the child is required to be registered as part of the next scheduled recertification, unless the individual qualifies for another exemption;

(ii) the exemption applies to the person who actually provides the care;

(iii) the dependent child or incapacitated person need not be considered a member of the food stamp household or even reside with the household; the exemption will not apply if the dependent or incapacitated person resides with others who provide the care;

(e) an individual subject to and complying with any work requirement under Title IV of the Social Security Act, including TANF work requirements;

(f) an individual who receives unemployment compensation benefits and is subject to and complying with a federal or state unemployment compensation system; an individual who has applied for but who has not yet received UCB is exempt if required to register with the department of labor as part of the unemployment compensation application process;

(g) an individual who is a regular participant in a state certified drug or alcohol treatment and rehabilitation program;

(h) an individual who is employed or self-employed and working a minimum of 30 hours a week or receiving weekly earnings at least equal to the federal minimum wage multiplied by 30 hours;

(i) migrant and seasonal farm workers who are under contract or similar agreement with an employer or crew

chief to begin employment within 30 days are exempt, although this does not prevent such individuals from seeking services from the E & T program;

(ii) workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage;

(i) a student who is eligible to participate in the FSP, and who is enrolled at least half time in any recognized school, high school, training program, or institution of higher education; this exemption remains in effect during normal periods of class attendance, vacations, and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer session);

(j) a household member who has made application for SSI and food stamp benefits at the social security administration, and whose application for food stamp benefits has been received by HSD, and who is determined eligible for food stamp benefits, shall be exempt from work registration until an SSI determination is made; a household member who is determined ineligible for SSI shall have the exemption from E & T work requirements evaluated at the time of the denial of SSI.

(3) Interim changes in status:

(a) Anyone losing exempt status because of changes subject to the reporting requirements in Paragraph (2) of Subsection A of 8.139.120.9 NMAC, will be required to register when the change is reported.

(b) Anyone gaining or losing exempt status because of changes not subject to the reporting requirements in Paragraph (2) of Subsection A of 8.139.120.9 NMAC, will have his/her work status evaluated at the next recertification.

(4) Processing changes:

Mandatory work participants who move out of a project area retain their work registration status at their new location, unless they become exempt.

(5) Residing in a non-work program county:

(a) The appropriate work registration code of any individual living in a project area which does not administer a work program through income support division, and who is not exempt from E & T work registration, will be entered into the individual's computer file. Those individuals will be dropped from referral to the E & T work program.

(b) Any household member living in a non-work program area may volunteer to participate in the E & T work program. The nearest project area administering a work program through ISD will accept the participant.

E. E & T work program:

The income support division (ISD) administers the work program for applicants and recipients of food stamp benefits who voluntarily participate in the work program. The purpose of the work program is to assist household members participating in the FSP to gain skills, training, work, or work experience that will increase an individual's ability to obtain and/or keep employment.

(1) Work registrant responsibilities: Each household member who must be registered for work is required to register at the time of initial application and every 12 months thereafter:

(2) HSD responsibilities: HSD is responsible for:

(a) screening each household member to determine work registration status;

(b) registering mandatory participants;

(c) providing information and explaining to each applicant FSP work requirements, rights and responsibilities and consequences for failure or refusal to comply; such information must be provided at application, at recertification, and when a previously exempt or new household member must be registered;

(d) disqualifying non-compliant individuals, and reinstating individuals who are subsequently determined to meet an exemption in Paragraph (2) of Subsection D of 8.139.410.12 NMAC.

(3) Reporting changes to the E & T work program: The following changes will be reported to the E & T work program:

(a) work participants who become exempt from work registration;

(b) work participants who are no longer certified for participation;

(c) work participants who move from the project area; and

(d) voluntary work participants who are deregistered.

(e) In most cases, the changes listed above are reported by entering the appropriate information into the household's computer file. In some cases, a manual form is used to report new information to the work program.

(4) Work program responsibilities:

(a) Scheduling and conducting assessment sessions: the work program will inform each registrant or participant of:

(i) voluntary E & T work program requirements, including rights and responsibilities;

(ii) services, benefits;

(b) placing a voluntary participant in a work activity: a participant may be placed in any work activity deemed appropriate by the work program;

(c) authorizing reimbursements up to the regulatory monthly limit for reasonable and necessary costs directly related to work

program participation;

(d) reporting voluntary work participants who wish to de-register.

(5) Good cause for noncompliance with E & T work requirements: The work program will report registrants or participants who fail or refuse to comply with work registration or who voluntarily quit a job, or reduce their work hours without good cause. The HSD has the primary responsibility to determine whether good cause exists for a failure or refusal to comply.

(a) Good cause is determined by considering the facts and circumstances involved, including information submitted by the household member and employer.

(b) Good cause includes circumstances beyond an individual's control, such as, but not limited to:

(i) registrant or participant household member's illness;

(ii) illness of another household member requiring the presence of the registered or participating member;

(iii) household emergency;

(iv) problems caused by registrant's or participant's inability to speak or read English;

(v) unavailability of transportation; or

(vi) lack of adequate child care for children who have reached age six but are under age 12.

F. Disqualification for noncompliance: No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the food stamp program if the individual fails or refuses, without good cause, to comply with work requirements in Subsection C of 8.139.410.12 NMAC.

(1) Individual disqualification: Any individual who fails or refuses to comply with the work registration, without good cause will be disqualified as follows:

(a) first occurrence: until compliance or for three months, whichever is later;

(b) second occurrence: until compliance or for six months, whichever is later;

(c) third occurrence: until compliance or for one year, whichever is later.

(2) Individual that is voluntarily participating: Any individual that is voluntarily participating in the work program is not subject to disqualification for non-compliance with work requirements.

(3) Treatment of income and resources: All the income and resources of an individual disqualified for noncompliance with work requirements will be counted to determine the household's income and resource maximum levels, and benefit

amount (see Subsection C of 8.139.520.10 NMAC). Any reported change that does not relate to the individual disqualification shall be processed after the appropriate determination in (a), (b) or (c) or (d) above is made. Food stamp benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC.

(4) Determining the disqualification period:

(a) At application: An individual who is a member in an applicant household, and who is in a prior disqualification period, will be denied food stamp benefits beginning with the month of application.

(b) During participation: An individual who has failed or refused to comply with work requirements while participating in the FSP will be ineligible to participate beginning with the month following the month in which the notice of adverse action time limit expires.

(c) Semiannual reporting households: An individual who has failed or refused to comply with work requirements during a semiannual reporting period, shall be ineligible to participate beginning with the month following the month the notice of adverse action time limit expires. If the adverse action time limit will expire in the month after the notice would have been sent, the caseworker must wait until the first day of the following month to send the notice of adverse action.

(5) Disqualification in the last month of certification: For all participating households, including households subject to semiannual reporting:

(a) If a notice of noncompliance is received in the last month of the certification period, an adverse action notice will be sent to the household. The disqualification period begins the first month following the month the adverse action time limit expires, whether or not the household reapplies for food stamp benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(b) If the adverse action time limit expires in the last month of the household's certification period, the disqualification penalty will begin the following month, whether or not the household reapplies for food stamp benefits. If the household subsequently reapplies, either in the last month of the certification period or after the certification period has expired, the individual disqualification will continue for the duration of the appropriate penalty period.

(6) Lifting the disqualification: An individual who has been disqualified

may resume participation during the disqualification period by becoming exempt from E & T work requirements listed in Paragraph (2) of Subsection D of 8.139.410.12 NMAC, if otherwise eligible.

G. Head of household provisions:

(1) Designation: The household may designate any adult parent of a child in the household as the head of household, if all adult household members making application agree to the selection. A household may designate the head of household each time the household is certified for participation in the FSP but may not change the designation during a certification period, unless there is a change in household composition.

(2) Compliance with E & T work requirements: For purposes of determining compliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the head of household will be considered as an individual household member. The head of household will be disqualified in accordance with the disqualification penalties in Paragraph (1) of Subsection H of 8.139.410.12 NMAC.

(a) If the head of household leaves the household during a period of ineligibility, the disqualification follows the individual. The remaining household members, if otherwise eligible, continue to be eligible to participate in the FSP.

(b) If the head of household becomes the head of another household, the individual disqualification continues to apply. The other household members continue to be eligible to participate in the FSP.

[02/01//95, 07/01/98; 8.139.410.12 NMAC - Rn, 8 NMAC 3.FSP.415, 05/15/2001; A, 10/15/2003; A, 01/01/2004; A, 04/01/2010]

8.139.410.13 VOLUNTARY QUIT AND REDUCTION OF HOURS

A. Voluntary quit/

reducing work hours: When a household reports a loss of income or reduction in work hours, a determination must be made whether any member has voluntarily quit a job or reduced work hours without good cause or if the individual is an employee of the federal government, or state or a political subdivision of the state, who is dismissed for participating in a strike against the federal government, state or political subdivision of the state.

(1) Period for establishing voluntary quit or a reduction in work hours: A determination of voluntary quit or reduction in work hours shall be made within the 60 day period prior to the household's application date, or any time after filing an application, or any time during the household's certification period.

(2) Verification requirements: Verification of the circumstances

surrounding the quit or reduction in work hours is required. Verification is mandatory for all individuals participating in the food stamp program. Benefits may not be conditionally granted pending verification of voluntary quit or reduction in work hours, except when verification cannot be obtained prior to the expedited service time limit.

(3) Providing verification: The primary responsibility for providing verification of the circumstances surrounding a quit or reduction in work hours rests with the household.

(a) Acceptable sources of verification include, but are not limited to: the employer at the time of quit, employee associations, union representatives, grievance committees or organizations.

(b) If documentary evidence cannot be obtained, a collateral contact may be used. The caseworker will obtain verification from acceptable collateral contacts provided by the household.

(c) If the household and caseworker are unable to obtain requested verification because the reason for the quit or reduction in work hours resulted from circumstances that cannot be verified for good cause, the caseworker will use the best source of information available. The household will not be denied access to the FSP.

(d) Circumstances which cannot be verified for good cause may include a refusal by an employer to provide information, discriminatory practices or unreasonable demands by an employer, or an inability to locate the employer.

(4) Applicant households: In the case of an applicant household, if any household member subject to food stamp E & T work requirements voluntarily quit a job or reduced work effort, that individual shall be disqualified according to Subsection F of 8.139.410.12 NMAC. The disqualification is effective upon a determination of eligibility for the remaining household members.

(5) Participating households: In the case of a participating household, if a household member is determined to have voluntarily quit a job or reduced work effort without good cause, that individual shall be disqualified according to Subsection F of 8.139.410.12 NMAC. The disqualification is effective the first month following the expiration of the notice of adverse action time limit.

B. Disqualification for voluntary quit or a reduction in work hours: No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the food stamp program if the individual has voluntarily quit or reduces work hours, without good cause, or is striking against the government.

(1) Individual disqualification:

Any individual who voluntarily quits a job, or reduces work hours without good cause will be disqualified as follows:

(a) first occurrence: for three months;

(b) second occurrence: for six months;

(c) third occurrence: for one year.

(2) Lifting the disqualification:

An individual who has been disqualified due to voluntary quit or reduction in work hours may resume participation when the disqualification period expires or by becoming exempt from E & T work requirements listed in Paragraph (2) of Subsection D of 8.139.410.12 NMAC, if otherwise eligible.

(3) Treatment of income and resources:

(a) All the income and resources of an individual disqualified for voluntary quit or reduction of work hours will be counted to determine the household's income and resource maximum levels, and benefit amount (see Subsection C of 8.139.520.10 NMAC).

(b) In the case of an applicant household, where there has been a determination of voluntary quit or reduction in work hours without good cause within 60 days prior to the application date, the earned income lost as a result of the quit or reduction in hours shall not be counted.

(c) When a determination is made that a household member has voluntarily quit or reduced work hours without good cause after an application is filed, but before approval, the earned income of the disqualified individual that would have been countable at application shall be calculated and used to determine the eligibility and benefit amount of the remaining household members.

(d) In the case of a participating household, where there has been a determination of voluntary quit or reduction in work hours without good cause, the department shall ensure that, as a result of the individual disqualification:

(i) the household's food stamp benefits do not increase for the length of the disqualification period;

(ii) the household's food stamp benefit amount for the length of the disqualification period is calculated by using the disqualified individual's income prior to the quit or reduction; and

(iii) the household will be issued the lesser of the food stamp benefit amount the household is eligible for prospectively or the food stamp benefit amount the household was receiving prior to the individual's disqualification.

(e) Any reported change that does not relate to the individual disqualification shall be processed after the appropriate

determination in (a), (b) or (c) or (d) above is made. Food stamp benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC.

C. Suitability and good

cause: The caseworker must make a determination whether there was good cause for the voluntary quit or reduction in work hours. Individuals determined to have good cause will be registered for work and must comply with E & T work requirements, unless an exemption in Paragraph (2) of Subsection D of 8.139.410.12 NMAC is met. For purposes of determining suitability of employment and good cause for noncompliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the following considerations may be evaluated.

(1) Unsuitable employment: In addition to any suitability requirements established under the E & T work program, employment is not considered suitable if:

(a) the wage offered is less than the higher of:

(i) the applicable federal or state minimum wage; or

(ii) 80% of the federal minimum wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 been applicable to the offer of employment;

(b) the employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in (a);

(c) the household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization;

(d) the work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act [29 U.S.C. 178] commonly known as the Taft-Hartley Act, or unless an injunction has been issued under Section 10 of the Railway Labor Act (45 U.S.C. 160);

(e) the degree of risk to health and safety is unreasonable;

(f) the member is physically or mentally unfit to perform the job duties, as documented by medical evidence or by reliable information from other sources;

(g) the employment offered within the first 30 days is not in the member's major field of experience;

(h) the distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting; employment is not considered suitable if daily commuting exceeds two hours per day, not including transporting a child to and

from a child care facility; nor is employment considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site;

(i) the working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs; for example, a sabbatarian may refuse to work on the Sabbath.

(2) Good cause for voluntary quit/reducing work hours: Good cause includes the following and must be evaluated on a case by case basis:

(a) circumstances beyond the individual's control, such as those that prevent compliance with E & T work registration as described in Paragraph (2) of Subsection E of 8.139.410.12 NMAC;

(b) resigning from a job that does not meet the criteria used to establish suitable employment in Paragraph (1) of Subsection B of 8.139.410.13 NMAC;

(c) discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;

(d) work demands or conditions that make continued employment unreasonable, such as working without being paid on schedule;

(e) enrollment of an individual at least half-time in a recognized school, training program, or institution of higher education which requires the individual to leave employment, or which requires the household to move to another county or political subdivision;

(f) resignations by individuals under age 60 which are recognized by the employer as retirement;

(g) acceptance of a bona fide offer of employment of more than 20 hours per week in which the weekly earnings are equivalent to the federal minimum wage multiplied by 20, which because of circumstances beyond the control of the individual, subsequently either does not materialize or results in employment of less than 20 hours per week or weekly earnings of less than the federal minimum wage multiplied by 20 hours;

(h) leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm workers or construction workers; even though work at the new site has not actually begun, quitting previous employment is considered to be for good cause if it is part of the pattern of that type of employment.

[8.139.410.13 NMAC - N, 04/01/2010]

8.139.410.14 ABLE BODIED ADULTS WITHOUT CHILDREN (ABAWDS): An applicant or recipient who

is a mandatory work participant in the food stamp E & T program shall be considered for compliance with the 20-hour-a-week work requirement for ABAWDs. Unless determined exempt, any individual who is a mandatory ABAWD shall be required to comply with the 20-hour-a-week work requirement to maintain eligibility for food stamp benefits. The ABAWD 20-hour-a-week work requirement has been suspended based on the American Recovery and Reinvestment Act of 2009 effective April 1, 2009 through September 30, 2011.

A. Exemptions:

(1) Certain individuals are exempt from the ABAWD 20-hour-a-week work:

(a) an individual determined to be exempt from work requirements of the food stamp E & T program set forth at Subsection D of this section;

(b) an individual under age 18 or age 50 or older;

(c) an individual medically certified as physically or mentally unfit for employment;

(d) a pregnant woman;

(e) an individual residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits;

(f) a natural, adoptive or step-parent residing in a food stamp household that includes at least one child under the age of 18, even if the child is not eligible for food stamp benefits;

(g) residing in a non-ABAWD county as documented by federal waiver or suspension of the 20-hour-a-week work requirement.

(2) **Medical reports:** To determine an exemption from the 20-hour-a-week work requirement on the basis of pregnancy or physical or mental unfitness, the individual must provide a written report by a medical practitioner such as a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist or social worker.

(a) In the case of a pregnancy, the report must verify the pregnancy and identify the expected date of delivery.

(b) A claim of physical or mental unfitness must be substantiated by a written report identifying the physical or mental condition and certifying that the person is unfit for employment.

B. Time limited eligibility for ABAWDs: An ABAWD who is determined mandatory to comply with the 20-hour-a-week work requirement shall not be eligible to participate in the food stamp program as a member of any household if the individual received food stamp benefits but failed to comply with the 20-hour-a-week work requirement for three countable months in a 36-month period.

(1) **36 month period:** The 36 month period is a fixed calendar month period beginning on December 1, 2002. The period ends on November 30, 2005.

(2) **Countable months in the 36-month time limit:** Within the fixed 36-month period, an ABAWD shall have a month counted toward the three-month time limit if the 20-hour-a-week work requirement is not met and the household received a full month's benefits.

(a) In no event shall a month be counted toward the three-month time limit if the individual has not attained the age of 18.

(b) A month that an ABAWD has used without fulfilling the work requirement in another state shall be counted toward the three-month time limit as long as the other state verifies the month has been used as a non-work month.

C. Fulfilling the 20-hour-a-week work requirement:

(1) **Working:** For purposes of determining the activities that count towards the 20-hour-a-week work requirement, the time spent working in exchange for money, or working in exchange for goods or services, or unpaid work, or any combination of these activities shall be considered as employment and credited toward the 20-hour-a-week work requirement.

(2) **Work activities:** Allowable work activities that count towards the 20-hour-a-week work requirement include:

(a) employment for at least 20 hours a week averaged monthly or 80 hours a month, but not unreported employment; in the case of self-employment income, gross monthly earnings, as determined under Paragraph (2) of Subsection E of 8.139.520.10 NMAC, are divided by the minimum wage to determine the number of hours that are countable in meeting the work requirement;

(b) participation in and compliance with the requirements of a work program at least 20 hours a week;

(c) any combination of employment and participation in a work program for at least 20 hours a week;

(d) job search or job search training activities that are incorporated into the department's a work program or another state or local program that meets food stamp E & T requirements as long as the job search or job search training activities equal less than half the work requirement;

(e) participation in and compliance with a workfare program.

(3) **Work program:** Allowable activities in a work program include those performed under:

(a) the Workforce Investment Act (Public Law 105-220);

(b) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296);

(c) the department's food stamp

E&T program;

(d) any other state or local program which is recognized by the department as meeting food stamp E&T program requirements.

D. Reporting and verifying work participation:

(1) It is the responsibility of the individual subject to the work requirement to report:

(a) whether or not that individual has worked or participated in a work program;

(b) the number of hours spent in work or work program activities;

(c) how the work requirement was fulfilled; and

(d) when the individual's work hours fall below 20 hours a week, averaged monthly, or 80 hours a month.

(2) Verification of the time spent working is mandatory in order to receive credit toward the work requirement. It is the responsibility of the individual subject to the work requirement to provide verification of participation in work activities by the fifth calendar day of each month following the month of participation in work activities.

E. Good cause for failure to meet the work requirement: An ABAWD may establish good cause for failure to meet the 20-hour-a-week work requirement if the absence from work is temporary and the individual retains employment, or if participation in work activities resulted from a temporary absence due to circumstances beyond the individual's control. Good cause reasons include, but are not limited to, illness, illness of another household member requiring the presence of the ABAWD, a household emergency, or the unavailability of transportation. Good cause is established on an individual basis.

F. Regaining eligibility: An individual who becomes ineligible due to failure to meet the work requirement for three months can regain eligibility by working or participating in an approved work program for at least 80 hours during any 30 consecutive day period following the date of ineligibility.

(1) An individual who regains eligibility is eligible on an ongoing basis provided he or she continues to meet the 20-hour-a-week work requirement.

(2) There is no limit to the number of times an individual may regain eligibility during the 36-month period.

G. Failure to meet the work requirement after regaining eligibility: An individual who has regained eligibility and who subsequently fails to meet the 20-hour-a-week work requirement in any month left in the 36-month period shall be eligible to receive food stamp benefits for a three consecutive month period.

(1) The three-month period begins

with the month the work requirement was not met, provided the individual is otherwise eligible.

(2) Upon expiration of the three months, the individual becomes ineligible for the remainder of the fixed 36-month period.

(3) The individual may re-establish eligibility by either regaining eligibility or because a determination is made that the individual becomes exempt from the 20-hour-a-week work requirement.

H. Costs: Except for costs assumed by HSD pursuant to an approved food stamp E&T supportive services plan, HSD has no financial responsibility for any costs or liabilities incurred by persons electing to participate in a work program in order to meet the food stamp work requirement.

[8.139.410.14 NMAC - N, 04/01/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.139.420 NMAC, Section 8, effective 04/01/2010.

8.139.420.8 CATEGORICAL ELIGIBILITY (CE)

[A. Household requirements:

(1) Categorically eligible households:

(a) Any household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for food stamp benefits:

(b) The household is categorically eligible with respect to: resources, gross and net income limits, SSN enumeration, sponsored alien information, and residence:

(c) Categorically eligible households are subject to all other food stamp eligibility requirements, including, but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements:

(d) Categorically eligible households also include those who are:

(i) approved for Title IV-a assistance, GA, or SSI benefits, but who have not yet received payment;

(ii) in zero payment status, because benefits are being recouped; or

(iii) entitled to Title IV-A assistance benefits, but receive no payment, because the payment amount is less than \$10:

(2) Determining categorical eligibility: A household is considered categorically eligible if the household:

(a) contains only members who are Title IV-A, GA, and/or SSI recipients; and

(b) meets the household definition in Subsection C of 8.139.400.8 NMAC; and

(c) includes all individuals who purchase and prepare food together in one food stamp household regardless of whether or not they are separate benefit groups for Title IV-A, GA, or SSI purposes; and

(d) includes no disqualified individuals:

(e) a caseworker shall verify questionable information related to determining categorical eligibility:

(3) Households ineligible for categorical eligibility:

(a) **Institutionalized:** Under no circumstances is a household considered categorically eligible if the household is institutionalized. Residents of public institutions who apply jointly for SSI and food stamp benefits before release from an institution are not considered categorically eligible if there is a finding of potential SSI eligibility by the social security administration prior to release. An individual becomes categorically eligible when the final determination is made for SSI eligibility and the individual has been released from the institution:

(b) **Disqualified:** A household shall not be considered categorically eligible if:

(i) a member is disqualified for intentional program violation (IPV); or

(ii) a member is disqualified for failure to comply with work requirements:

(c) **Refusal to cooperate:** A household that refuses to cooperate in providing information that is necessary to determine eligibility shall not be deemed to be categorically eligible:

(d) Such households shall be subject to all food stamp eligibility and benefit provisions, including treatment of income and resources for disqualified members, and cannot be reinstated in the food stamp program (FSP) on the basis of the categorical eligibility provision:

(4) **Ineligible household members:** A household shall not be categorically eligible if the household contains a member who is ineligible to participate in the food stamp program because the member is:

(a) an ineligible alien;

(b) an ineligible student;

(c) institutionalized;

(d) ineligible because of failure to comply with work requirements;

(e) disqualified for failure to provide or apply for a social security number;

(f) an individual disqualified for IPV; or

(g) an individual who receives SSI and who is ineligible because of a drug related felony conviction as set forth in Subsection C of 8.139.400.12 NMAC:

B. Continued categorical eligibility:

(1) **Assumed to continue:** Categorical eligibility is assumed to continue when a household receiving Title IV-A or GA has not submitted an application for redetermination and the household's food stamp certification period will expire. If the household is later determined to be ineligible for Title IV-A or GA benefits, it may remain eligible for food stamp benefits as a non-cash assistance household. For a change which becomes known to the caseworker, the change reporting procedures in 8.139.120.9 NMAC are used to determine eligibility and food stamp benefit amount:

(2) **When income exceeds standards:** Categorically eligible households are exempt from food stamp gross and net income limits, but shall meet all other food stamp eligibility requirements for food stamp benefit determination. A one- or two-person categorically eligible household is entitled to the minimum food stamp benefit amount, except in an initial month if its prorated food stamp benefit amount is less than \$10. A categorically eligible household of three or more individuals remains an active case even if the household is entitled to no benefits

because its net income exceeds the maximum at which food stamp benefits can be issued.

C. Categorical eligibility at application:

(1) Food stamp eligibility requirements prior to cash assistance determination: Households applying for Title IV-A, GA, or SSI assistance shall be certified for food stamp benefits based on all food stamp eligibility requirements prior to approval for the cash assistance program(s). The household shall be notified that the food stamp benefit amount shall be adjusted without further notice if the application for Title IV-A, GA, or SSI assistance is approved.

(2) Verification factors:

(a) For households applying for both cash assistance and food stamp benefits, the caseworker shall verify all factors of eligibility which are needed only to determine the household's eligibility for food stamp benefits.

(b) For those factors needed to determine both cash assistance and food stamp eligibility, the caseworker shall use cash assistance verification rules:

(c) An caseworker shall not delay a household's food stamp benefits if at the end of 30 days following the date the application was filed, there is enough verification to approve the food stamp case, but not enough verification to meet the cash assistance verification rules.

(3) Cash assistance approval: When a cash assistance application is approved, the household shall be considered categorically eligible, if the household meets all categorical eligibility requirements in 8.139.420.8 NMAC.

(4) Anticipating cash assistance payment: If a caseworker can anticipate the amount and date of receipt of an initial cash assistance payment, the payment shall be used to determine the household's food stamp benefit amount if the cash assistance payment will be received in the month of application. If the payment will not be received until a later month, the caseworker shall adjust the household's food stamp benefit amount according to the anticipated receipt of the payment.

(5) If the amount or date of receipt of an initial cash assistance payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, receipt of the cash assistance payment shall be handled as a change in circumstances. An adverse action notice shall not be required if receipt of the cash assistance payment reduces, suspends, or terminates the household's food stamp benefits, provided that the household has been notified in advance that its benefits may be reduced, suspended or terminated when the payment is received.

D. Application processing:

(1) FS approval postponed: Approval for food stamp benefits may be postponed within the 30-day processing time limit in order to determine if a household will be eligible for Title IV-A, GA, or SSI assistance, unless the household is entitled to expedited service. If the household is determined eligible for cash assistance benefits, the food stamp application will be approved at the same time.

(2) FS denial: If a household does not meet food stamp eligibility requirements at the time of application, the caseworker may postpone denying a potentially categorically eligible household. If the household is not determined categorically eligible, the food stamp application is denied at the time the cash assistance application is denied.

(3) Re-registering denied applications: A caseworker shall re-register a denied food stamp application if the household is later determined eligible for Title IV-A, GA, or SSI benefits and the household is otherwise categorically eligible. When a denied food stamp application is re-registered, the caseworker shall use the original food stamp application. The food stamp benefit amount for the initial month is prorated from the date the cash assistance benefits are payable, or the date of the original food stamp application, whichever is later. A second interview or application from the household is not necessary.

(4) Updating application: When a caseworker must update and reevaluate the original application of a denied case, the caseworker shall use any available information to update the application. The household shall be contacted by phone or by mail to confirm and explain changes, and to determine if any other changes in household circumstances have occurred. In cases where the information received from the household differs from that obtained by the caseworker, or the household provides additional changes in information, the household or the authorized representative must initial the changes and re-date and re-sign the original food stamp application.

(5) SSI application denials: Since the caseworker does not have first-hand knowledge of the progress of an SSI application, and if the food stamp application was denied on the 30th day, the household shall be advised to reapply for food stamp benefits when it is notified of SSI approval.]

All members of a food stamp household must maintain CE status for the household to be considered CE. Categorically eligible one and two person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than \$10.

A. Determining CE: Households may be CE by receiving financial assistance or by receiving a non-cash TANF/MOE funded benefit or service, known as broad-based CE.

(1) Financial assistance/SSI CE: A food stamp household is considered CE for the entire month when all of its members receive or has been determined eligible to receive any combination of the benefits or services from the following:

(a) financial assistance;

(b) financial, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;

(c) SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)).

(2) Broad-based CE due to receiving a non-cash TANF/MOE funded benefit or service: A food stamp household is considered to be a broad-based CE household for the month of application and the entire certification period when the household's gross income is less than 165% FPG and the household has received a non-cash TANF/MOE funded benefit or service.

(3) Households not entitled to CE: A household shall not be considered CE if:

(a) any member is disqualified for an IPV;

(b) any member is disqualified for failure to comply with work registration or E&T requirements, including voluntarily quitting a job or reducing employment hours without good cause;

(c) any member is disqualified because of fleeing felon status or parole/probation violations;

(d) the household is institutionalized; or

(e) the household refuses to cooperate in providing information that is necessary to determine eligibility.

(4) Households may be CE if they contain non-household members such as ineligible students, ineligible aliens, ABAWDs who are ineligible due to time limits.

B. Eligibility factors for CE households: All CE households are subject to food stamp eligibility requirements, including,

but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements.

(1) Financial assistance/SSI households: Households entitled to CE because of receipt of financial assistance or SSI do not have to provide verification of the following eligibility factors:

- (a) resources;
- (b) social security number;
- (c) sponsored alien information; and
- (d) residency.

(2) Broad-based households: Households entitled to CE because they received a non-cash TANF/MOE funded benefit or service do not have to verify resources.

C. Case management for all CE households:

(1) Applicant households: Caseworkers shall postpone denying a potentially CE household until the 30th day to allow financial assistance or SSI benefit approval. If within 30 days following the denial date, the caseworker becomes aware of, approval which makes the household CE benefits shall be paid using the original application and any other information which has become available since that time.

(2) Responsibility to report changes: CE households subject to simplified or regular reporting must report changes in accordance with 8.139.120 NMAC.

(3) Action on changes to CE status: When a household reports a change or the department becomes aware of a change, the caseworker shall take action to determine if the household is still entitled to continue CE.

(a) Financial assistance: When the household reports a loss or the department becomes aware of a loss of SSI or financial assistance, the household should be evaluated for broad-based CE.

(b) Broad-based CE: The caseworker shall take action to determine if the household still meets the criteria for broad-based CE status per Paragraph (2) of Subsection A above. Should the reported change result in a loss of broad-based CE the household will be notified in writing. Any household no longer entitled to broad-based CE status may still participate in the food stamp program and are subject to all eligibility requirements including resource and reduced income limits.

[02/01/95, 07/01/97, 06/01/99; 8.139.420.8 NMAC - Rn, 8 NMAC 3.FSP.426, 05/15/2001; A, 02/14/2002; A, 04/01/2010]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to 8.139.500 NMAC, Sections 8 and 10, effective 04/01/2010.

8.139.500.8 BASIS OF ISSUANCE

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

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

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

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

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

Household Size	Maximum Gross Monthly Income [Elderly/Disabled-Separate Status] Categorical Eligibility at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
1	\$1,490	\$1,174	\$ 903	\$200
2	\$2,004	\$1,579	\$1,215	\$367
3	\$2,518	\$1,984	\$1,526	\$526

4	\$3,032	\$2,389	\$1,838	\$668
5	\$3,547	\$2,794	\$2,150	\$793
6	\$4,061	\$3,200	\$2,461	\$952
7	\$4,575	\$3,605	\$2,773	\$1,052
8	\$5,089	\$4,010	\$3,085	\$1,202
\$Each Additional Member	+\$515	+\$406	+\$312	+\$150

F. Deductions and standards:

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

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

(3) Expense deductions and standards table:

Standard Deduction for Household Size of 1 through 3	\$141.00
Standard Deduction for Household of 4	\$153.00
Standard Deduction for Household Size of 5	\$179.00
Standard Deduction for Household Size of 6 or more	\$205.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction	Actual Amount
Heating/Cooling Standard Utility Allowance (HCSUA)	\$278.00
Limited Utility Allowance (LUA)	\$101.00
Telephone Standard (TS)	\$ 32.00
Excess Shelter Cost Deduction Limit for Non-Elderly/Disabled Households	\$459.00
Homeless Household Shelter Standard	\$ 143.00
Minimum Allotment for Eligible One-and Two-Person Households	\$ 16.00

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98, 11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 04/01/2010]

8.139.500.10 DETERMINING INCOME

A. Anticipating income: In determining a household's eligibility and food stamp benefit amount the caseworker shall use income already received by the household during the certification period and any income the household and the caseworker are reasonably certain shall be received during the remainder of the certification period.

(1) If the amount of income or date of receipt is uncertain, that portion of the household's income that is uncertain shall not be counted.

(2) If the exact amount of the income is not known, that portion of the income which can be anticipated with reasonable certainty shall be considered income.

(3) In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, a household may choose to average its income.

B. Income received during any past 30 day consecutive period that includes 30 days prior to the date of application through the date of timely disposition shall be used as an indicator of the income that is and shall be available to the household during the certification period.

(1) Past income is not used as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated during the certification period.

(2) If income fluctuates to the extent that a single four-week period does not provide an accurate indication of anticipated income, a longer period of past time can be used if it gives a more accurate indication of anticipated fluctuations in income.

(3) Income already received is not used and verification is obtained from the income source, if the household and the caseworker decide that income already received by the household is not indicative of income expected to be received in future months.

C. Semiannual reporting: A household filing a semiannual report is subject to the income methodology specified at Subsection H of 8.139.120.9 NMAC.

D. Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

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

Use of conversion factors: Whenever a full month's income is anticipated and is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by 4.0;

(2) income received on a biweekly basis is averaged and multiplied by 2.0;

(3) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

F. Held wages:

(1) Wages withheld at the request of an employee shall be considered income to a household in the month the wages would otherwise have been paid by the employer.

(2) Wages withheld by the employer as a general practice, even in violation of the law, shall not be counted as income to a household, unless the household anticipates that it will ask for and receive an advance.

(3) If a household anticipates asking for and receiving income from wages that were previously withheld by the employer as a general practice, the income shall be counted to determine eligibility.

G. Earned income:

(1) Earned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification period; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

H. Unearned income:

(1) Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification

period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

(4) Households receiving state or federal assistance payments, such as Title IV-A, GA, SSI or social security payments on a recurring monthly basis are not considered to have varied monthly income from these sources simply because mailing cycles may cause two payments to be received in one month.

I. Income received more frequently than weekly: The amount of monthly gross income paid more frequently than weekly (i.e., daily) is determined by adding all the income received during the past four weeks. The gross income amount is used to anticipate income in the application month and the remainder of the certification period. Conversion factors shall not be applied to this income.

J. Income received less frequently than monthly: The amount of monthly gross income paid less frequently than monthly is determined by dividing the total income by the number of months it is intended to cover. The caseworker shall carefully explain to the household how the monthly income was computed and what changes might result in a reportable change. Documentation shall be filed in the case record to establish clearly how the anticipated income was computed.

K. Use of conversion factors: Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is averaged and multiplied by ~~[4:3]~~ 4.0;

(2) income received on a biweekly basis is averaged and multiplied by ~~[2:15]~~ 2.0;

(3) ~~[using the conversion factors accounts for those months in which an extra paycheck is received;~~

~~_____ (4) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.~~

L. Known changes in income for future months at application:

(1) At application or recertification, it shall be determined if any factors affecting income will change in future months. Such factors include a new income source, termination of income, or increases or decreases in income.

(2) Income is considered only

when the amount of the income and the date it will be received are reasonably certain.

(3) In the event that a change is known for future months, benefits are computed by taking into account the change in income.

M. Averaging income over the certification period:

(1) All households may choose to have their income averaged. Income is usually not averaged for destitute households because averaging would result in assigning to the month of application income from future periods which is not available for its current food needs.

(2) To average income, the caseworker uses a household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.

(3) **Contract income:** Households which, by contract, derive their annual income in a period of less than one year shall have that income averaged over a 12 month period, provided that the income is not received on an hourly or piecework basis.

(a) Contract income includes income for school employees, farmers, self-employed households, and individuals who receive annual payments from the sale of real estate.

(b) These procedures do not include migrant or seasonal farm worker households.

(4) **Educational monies:** Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it is provided. All months which the income is intended to cover shall be used to average income, even if the income is received during the certification period. If the period has elapsed completely, the educational monies shall not be considered income.

N. Using exact income: Exact income, rather than averaged income, shall be used if:

(1) the household has chosen not to average income;

(2) income is from a source terminated in the application month;

(3) employment has just begun in the application month and the income represents only a partial month;

(4) in the month of application, the household qualifies for expedited service or is considered a destitute, migrant or seasonal farm worker household; or

(5) income is received more frequently than weekly, (i.e., daily).

[02/01/95, 11/01/95, 07/01/97, 06/01/99; 8.139.500.10 NMAC - Rn, 8 NMAC 3.FSP.502.7, 05/15/2001; A, 02/14/2002; A, 01/01/2004; A, 08/30/2007; A, 04/01/2010]

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

This is an amendment to 8.139.510 NMAC, Section 8, effective 04/01/2010.

8.139.510.8 RESOURCE ELIGIBILITY STANDARDS

A. The maximum allowable resources, including both liquid and non-liquid assets, of all members of a household cannot exceed:

(1) \$2,000; or

(2) \$3,000 for households consisting of or including a member who is elderly or disabled as defined at Paragraph (23) of Subsection A of 8.139.100.7 NMAC.

B. The value of a nonexempt resource is its equity value. Equity value is the fair market value less encumbrances. The value of stocks and bonds, such as U.S. savings bonds, is their cash value, not their face value.

C. It is a household's responsibility to report all resources held at the time of application and any anticipated to be received, or that are later received during the certification period, that might place the household's resources above the maximum allowed.

D. Categorically eligible households: Households ~~in which all members receive Title IV-A, GA, or SSI benefits~~ that are categorically eligible ~~and~~ do not need to meet the resource limits or provisions of this section.

E. Sponsored aliens: For households containing sponsored aliens, a prorated amount of the countable resources of an alien's sponsor and sponsor's spouse (if living with the sponsor) are deemed to be those of the sponsored alien, in accordance with sponsored alien provisions in 8.139.420.9 NMAC.

F. Non-household members: The resources of non-household members, defined in 8.139.400.10 NMAC shall not be considered available to the household.

G. Resources of ineligible or disqualified household members: The resources of ineligible or disqualified household members shall be counted as available to the household in their entirety. If a resource exclusion applies to a household member, the exclusion shall also apply to the resources of an ineligible or disqualified person whose resources are counted as available to the household.

[02/01/95, 07/01/97, 07/01/98, 06/01/99; 8.139.510.8 NMAC - Rn, 8 NMAC 3.FSP.510, 05/15/2001; A, 02/01/2002; A, 10/01/2002; A, 04/01/2010]

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

This is an amendment to 8.139.520 NMAC, Section 8, effective 04/01/2010.

8.139.520.8 INCOME:

The national income eligibility standards are based on the federal income poverty levels established in section 673(2) of the Community Services Block Grant Act [42 U.S.C. 9902(2)]. The net income standard is the federal income poverty guideline for the 48 contiguous states and the District of Columbia. The gross income standard is 130% of that amount. The income standards are adjusted annually each October 1st. Activities described in this section relate to the calculation of a household's income to determine eligibility and food stamp benefit amount.

A. Elderly/disabled households: Households which contain an elderly or disabled member, as defined in 8.139.100 NMAC, definitions, must meet the net income eligibility standards listed in Subsection E of 8.139.500.8 NMAC.

B. Other households: Households which do not contain an elderly or disabled member, as defined, must meet the gross income eligibility standards for the food stamp program (FSP) (Subsection E of 8.139.500.8 NMAC). If a household is determined eligible based on gross income standards, deductions shall be allowed in calculating net monthly income to arrive at a final eligibility determination based on net income standards.

C. Categorically eligible: ~~[Title IV-A, GA and/or SSI]~~ Households that are entitled to broad-based categorically eligibility must meet gross and net income eligibility. Households that are categorically eligible, ~~[as defined in 8.139.420.8 NMAC;]~~ due to receipt of financial assistance do not need to meet the gross or net income eligibility standard. The food stamp benefit amount ~~for all CE households~~ shall be based on net income limits. All categorically eligible one- and two-person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than \$10.

D. Income of ineligible or disqualified household members:

(1) The earned or unearned income of an individual disqualified for intentional program violation (IPV) or for noncompliance with the employment and training (E&T) work requirements shall be attributed in its entirety to the remaining members.

(2) The earned or unearned income of an individual disqualified for failing to provide or apply for a social security number

or because the individual is an ineligible alien shall continue to be counted as income, minus a pro rata share for the disqualified or ineligible member(s).

E. Income of non-household members: The earned or unearned income of an individual listed below shall not be considered available to the household with which the individual lives:

(1) roomers;

(2) boarders;

(3) foster children, if the household chooses not to include them;

(4) live-in attendants; and

(5) ineligible students.

[02/01/95, 07/01/97, 07/01/98, 06/01/99; 8.139.520.8 NMAC - Rn, 8 NMAC 3.FSP.520, 05/15/2001; A, 02/14/2002; A, 04/01/2010]

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

This is an amendment to 8.150.500 NMAC, Section 10, effective 04/01/2010.

8.150.500.10 GROSS INCOME DETERMINATION:

Gross income is defined as all income received prior to deductions, including taxes, and garnishments, whether voluntary or involuntary.

A. Income sources: Gross income includes income from both earned and unearned sources.

B. Countable income: The gross unearned income of all household members is counted in its entirety, and the gross earned income of all household members over the age of 18 is counted in its entirety, unless:

(1) the income is specifically exempted; or

(2) the income is self-employment (see LIHEAP 8.150.520.9 NMAC); or

(3) the income is that of an ineligible alien, in which case the income is prorated (see LIHEAP policy 8.150.520.10 NMAC);

(4) the income is a full month's income and is anticipated to be received on a weekly or biweekly basis; in these circumstances, the income shall be converted to a monthly amount as follows:

(a) income received on a weekly basis is averaged and multiplied by [4.3] 4.0;

(b) income received on a biweekly basis is averaged and multiplied by [2.15] 2.0;

(c) ~~using the conversion factors accounts for those months in which an extra paycheck is received;~~

~~(d) averaged income shall be rounded to the nearest whole dollar prior~~

to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

C. Gross income receipt period: Gross income received or anticipated to be received by the household in the month of application is used to establish income eligibility for LIHEAP applications unless Subsection D of 8.150.500.10 NMAC applies.

D. Current income verified in other public assistance programs: Current income that has been verified by ISD in another active public assistance programs may be used to verify income for the LIHEAP application, unless questionable.

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-00; 8.150.500.10 NMAC - Rn, 8 NMAC 22.LHP.501.2 & A, 10-1-01; A, 10-1-05; A, 10-1-07; A, 4-1-10]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to 1.7.4 NMAC Sections 7, 12, 15 and 16, effective 3-31-10, adopted by the State Personnel Board at a meeting on 3-4-10.

1.7.4.7 DEFINITIONS:

A. “Alternative pay band” means the range of pay rates, from the minimum to the maximum for a classification based on the current market rate for benchmark jobs in the relevant labor market(s).

B. “Alternative work schedule” means a schedule that is requested by an employee and approved by the agency that deviates from the normal work schedule.

[B:] C. “Appropriate placement” means those elements to be considered in determining pay upon hire, promotion, transfer or reduction including the employee’s education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.

[C:] D. “Comparison market” means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

[D:] E. “Contributor proficiency zones” means subdivisions of the pay band that designate the employee’s contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

[E:] F. “In pay band adjustment” means movement within a

pay band for demonstrated performance, skill or competency development, and/or internal alignment, which allows agency management to provide salary growth within a pay band.

[F:] G. “Internal alignment” means an adjustment that addresses pay issues involving the proximity of one employee’s salary to the salaries of others in the same agency and classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

[G:] H. “Normal work schedule” means a schedule established by the agency, defining a start and end time for the employee.

[H:] I. “Pay plan” means a document developed by the director and approved annually by the board, that describes the board’s compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

[I:] J. “Shift work schedule” means a normal work schedule assigned to an employee as part of a rotating group of individuals that must continuously maintain a twenty-four hour operation.

[J:] K. “Total compensation” means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

[1.7.4.7 NMAC - Rp, 1.7.4.7 NMAC, 11/14/02; A, 7-15-05; A, 12-30-05; A, 3-31-10]

1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance salary: Upon entrance to a classified position, a newly-appointed employee’s salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor zone must receive approval from the director prior to appointment.

B. Legislative authorized salary increase:

(1) Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within their assigned pay band.

(2) Employees with a salary at or above the maximum of the position’s pay band shall not be eligible for an increase unless authorized by statute.

C. Salary upon in pay band adjustment: Upon in pay band adjustment, subject to director approval, budget availability and reflective of appropriate placement, agencies may increase an employee’s salary up to ten percent (10%) during a fiscal year. An employee may receive more than one

adjustment within a fiscal year provided the salary increases do not exceed more than ten percent (10%) and the employee’s base salary does not exceed the maximum of the assigned pay band. When reviewing requests for in pay band adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band.

D. Salary upon promotion: Upon promotion, an employee’s salary subject to budget availability, should reflect appropriate placement within the pay band. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director. A salary increase greater than fifteen percent (15%) to bring an employee’s salary to the minimum of the pay band or less than five percent (5%) to prevent an employee’s salary from exceeding the maximum of the pay band does not require the approval of the director. The salary of a promoted employee shall be in accordance with *Subsection B of 1.7.4.11 NMAC*.

E. Salary upon demotion: Upon demotion, an employee’s salary shall be decreased to an hourly rate of pay which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay band or the decrease is being made in accordance with *Paragraph (2) of Subsection F of 1.7.4.12 NMAC*.

F. Pay allowance for performing first line supervisor duties:

(1) An agency shall grant a pay allowance to an employee in a non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and shall be between 0% and 20% above the employee’s base pay rate.

(2) When the supervisor duties are no longer being performed, the agency shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) Agencies shall require that a form, established by the director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

G. Salary upon transfer:

(1) Upon transfer an employee’s salary, subject to budget availability and reflective of appropriate placement, may be increased up to ten percent (10%). The director may approve a salary increase greater than ten percent (10%) due to special

circumstances that are justified in writing.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

H. Salary upon pay band change: When a change of pay band is authorized in accordance with the provisions of *1.7.4.9 NMAC, 1.7.4.10 NMAC, and/or 1.7.4.11 NMAC* the salaries of affected employees shall be determined in accordance with *Subsection C of 1.7.4.11 NMAC*. Employees whose pay band is adjusted upward or downward shall retain their current salary in the new pay band. Employees' salaries may be addressed through in pay band adjustment unless otherwise allowed by statute.

I. Salary upon reduction: The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with *Paragraph (2) of Subsection F of 1.7.4.12 NMAC*. An employee's salary should reflect appropriate placement within the pay band. The director may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

J. Salary upon return to work or reemployment: The salary of former employees who are returned to work or re-employed in accordance with the provisions of *1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC* shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay band.

K. Salary upon temporary promotion: Pay for a temporary promotion under *Subsection E of 1.7.5.12 NMAC*, will be administered in accordance with *Subsection D of 1.7.4.12 NMAC*. The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

L. Temporary salary increase: An agency may, with the approval of the director, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability and/or a higher valued job. The director may approve temporary salary increases above the maximum of the employee's current pay band. The agency shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

M. [Shift] Pay for dusk to

dawn work: Employees shall be paid, in addition to their regular pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m. [~~Agencies shall notify the director of any change in this rate.~~]

(1) Agencies shall notify the director of any change to the rate of pay or hours of eligibility.

(2) An employee may waive the additional pay when requesting an alternative work schedule.

N. Salary adjustment to minimum: An employee whose salary falls below the minimum of the pay band will be adjusted in accordance with *Paragraph (2) of Subsection C of 1.7.4.11 NMAC*.

[1.7.4.12 NMAC - Rp, 1.7.4.10 NMAC, 11/14/02; A, 7-15-05; 1.7.4.12 NMAC - Rn, 1.7.4.13 NMAC & A, 12-30-05; A/E, 1-30-06; A, 3-31-06; A, 3-31-10]

1.7.4.15 CALL-BACK PAY:

A. Employees who are directed to return to work after completing their normal [shift] or alternative work schedule and before their next [shift] normal or alternative work schedule:

(1) shall be paid in accordance with the provisions of *1.7.4.14 NMAC*, if the time worked results in overtime; or:

(2) shall be paid their hourly rates, if the time worked does not result in overtime.

B. Agencies may establish a minimum number of hours to be paid when employees are called back in accordance with their agency policy.

[1.7.4.15 NMAC - Rp, 1.7.4.13 NMAC, 11/14/02; 1.7.4.15 NMAC - Rn, 1.7.4.16 NMAC & A, 12-30-05; A, 3-31-10]

1.7.4.16 ON-CALL PAY:

A. In accordance with the provisions of the *Fair Labor Standards Act*, agencies shall develop a policy to compensate employees directed to remain on-call after their normal or alternative work [shift] schedule.

B. Agencies shall file their on-call compensation policy with the office. Subsequent revisions to the on-call policy shall be filed with the office prior to implementation.

[1.7.4.16 NMAC - Rp, 1.7.4.14 NMAC, 11/14/02; 1.7.4.16 NMAC - Rn, 1.7.4.17 NMAC, 12-30-05; A, 3-31-10]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.6 NMAC Section 8, effective 4/15/10.

16.20.6.8 P H Y S I C A L THERAPIST ASSISTANTS:

A. A physical therapist assistant may work only under the direction and supervision of a New Mexico physical therapist who is licensed pursuant to Section 61-12-10, (A) and (B) of the Physical Therapy Act. The referring physical therapist shall assume full responsibility for the professional activities of the assistant which are undertaken pursuant to his/her direction or supervision.

B. A physical therapist may not be responsible for the direction and supervision of more than two full-time physical therapist assistants or two FTE's (full-time equivalency, totaling eighty (80) work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, or full-licensed physical therapist assistants.

C. A physical therapist may supervise more than two physical therapist assistants provided combined FTE's do not exceed (80) hours per week.

D. The direction and supervision of the physical therapist assistant shall ~~include~~ require the following:

(1) the referring physical therapist is responsible for the patient's care;

(2) when physical therapy services are being provided, ~~the referring~~ a licensed physical therapist must be on call and readily available for consultation by phone, electronic mail or cellular phone when ~~leaving~~ the referring physical therapist leaves the immediate area of his/her practice;

(3) the referring physical therapist will formulate a current written plan of care for each patient; the referring physical therapist will review the plan of care periodically, within ~~[thirty-(30)]~~ ninety (90) days;

(4) the scope of practice for a physical therapist assistant is described in the American physical therapy association documents HOD P06-05-18-26 and HOD P06-00-30-36; the physical therapist assistant shall not:

(a) specify and/or perform definitive ~~[(decisive,—conclusive,—final)]~~ (initial, progress/re-evaluation, discharge) evaluative and assessment procedures; or

(b) alter goals or a plan of care;

(5) the physical therapist assistant may sign daily notes without the physical therapist's co-signing; each daily treatment note in a patient's permanent record completed by a PTA must include the name of the referring physical therapist; and

(6) the physical therapist assistant shall respond to acute changes in the patient's physiological state; the physical therapist assistant shall notify the referring physical therapist of those changes prior to the next treatment session.

[03-29-83; 02-19-88; 08-01-89; 05-08-91; 09-03-92; 05-01-96; 16 NMAC 20.6.8 - Rn & A, 16 NMAC 20.7, 10-15-97; 16.20.6.8 NMAC - Rn, 16 NMAC 20.6.8, 08-31-00; A, 03-02-06; A, 1-12-08; A, 4-15-10]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.10.5 NMAC, Sections 7 and 8. A new Section 9 is added to the rule as a temporary provision. The amendments and new provision are effective March 31, 2010.

6.10.5.7 DEFINITIONS:

A. "Condensed year calendar" means a calendar for a school district, school or charter school operating on a four-day schedule each week.

B. "Department" means the public education department.

C. "Local board" means a board of education of a school district or a governing body of a charter school.

D. "Secretary" means the secretary of the New Mexico public education department.

E. "Variable school calendar" means a calendar for a school district, school or charter school ~~[operations extending over]~~ operating on a 10, 11 or 12-month period or portions thereof in excess of nine months, which permits student attendance on a staggered schedule. [6.10.5.7 NMAC - N, 11-13-09; A, 03-31-10]

6.10.5.8 REQUIREMENTS:

While department approval is not required, any local board planning to operate under a condensed year or variable school calendar shall justify a decision to implement such a calendar based upon the results of public input and other considerations as set forth in this section.

A. Approval procedure: To operate under a condensed year or variable school calendar, the local board shall, at a duly noticed public meeting held prior to the condensed year or variable school calendar's implementation date, declare in a detailed written resolution its intention to operate under a condensed year or variable school calendar.

(1) The local board's approval procedure shall include the following:

(a) an identification of the schools, by grade level, to be operated under the calendar;

(b) public input at a public meeting on how student and school achievement and financial issues would be impacted by the proposed condensed year or variable school calendar;

(c) public input at a public meeting on the anticipated impact of the proposed condensed year or variable school calendar upon the school district, charter school, family and community;

(d) public input at a public meeting on the impact of the proposed condensed year or variable school calendar on: facilities, capital needs, operational budget, transportation services, personnel needs, staffing patterns, and instructional programs within the school district or charter school;

(e) verification of substantial community support for implementation of the proposed condensed year or variable school calendar; and

(f) public input at a public meeting on how the proposed condensed year or variable school calendar will ensure that a school year will consist of the minimum number of full instructional days required by Paragraphs (1) and (2) of Subsection B of 6.10.5.8 NMAC.

(2) Any resolution adopted by the local board to implement a condensed year or variable school calendar shall contain an assurance that each of the criteria set forth in Subsection A of 6.10.5.8 NMAC have been satisfied.

B. Length of school day beginning with the ~~[2010-2011]~~ 2011-2012 school year:

(1) Beginning with the ~~[2010-2011]~~ 2011-2012 school year, school districts and charter schools operating under a condensed year calendar shall operate under a calendar consisting of at least 150 full instructional days per year exclusive of lunch and any release time for in-service ~~[training as follows]~~ training. Specifically, students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(a) if in kindergarten for half-day programs, ~~[two and one-half]~~ three hours per day or for full-day programs, ~~[five and one-half hours]~~ six hours and 36 minutes per day;

(b) if in grades one through six, ~~[five and one-half hours]~~ six hours and 36 minutes per day ~~[for a total of nine hundred ninety hours per year]~~; and

(c) if in grades seven through 12, seven hours and 12 minutes per day ~~[for a total of one thousand eighty hours per year]~~.

(2) Beginning with the ~~[2010-2011]~~ 2011-2012 school year, school districts and charter schools that operate on a regular or variable calendar, shall operate under a calendar consisting of at least 180 full instructional days per year exclusive of lunch and any release time for in-service training.

(3) Specifically, students shall be

in school-directed programs, exclusive of lunch, for a minimum of the following:

(a) if in kindergarten for half-day programs, two and one-half hours per day or, for full-day programs, five and one-half hours per day;

(b) if in grades one through six, five and one-half hours per day; and

(c) if in grades seven through 12, six hours per day.

(4) School districts and charter schools may establish a school year or length of school days in excess of the minimum requirements established in this section provided that they do so only after holding a duly noticed public meeting ~~[held]~~ at which public input is permitted. Charter schools shall not be required to obtain permission from their authorizer to extend their school year or length of school days but shall provide them with written notice of the proposed change prior to implementation. Budget implications should be carefully addressed when consideration is given to exceeding the minimum requirements.

C. ~~[Except as provided in Paragraph (4) of Subsection B of 6.10.5.8 NMAC, days]~~ Days or parts of days that are lost to weather where that weather-related loss exceeds two hours, or lost to in-service training or lost to other events that are not school-directed programs shall be made up so that students receive a full instructional school year.

D. Upon approval of scheduling by the school principal, teachers may:

(1) use up to 33 hours of the full-day kindergarten program for home visits or for parent- teacher conferences;

(2) use up to 22 hours of grades one through six programs for home visits or for parent- teacher conferences;

(3) use up to 12 hours of grades seven through 12 for consultation with parents or to develop student next-step plans.

E. Length of school day requirements during the ~~[2009-2010]~~ 2010-2011 school year shall be satisfied by complying with the minimum requirements set forth in Section 22-2-8.1, NMSA 1978 as they existed in law prior to the 2009 changes that contained a delayed-year effect. School districts and charter schools may, however, voluntarily commence complying with the new requirements set forth in Subsection B of 6.10.5.8 NMAC above.

F. The secretary may, on a case by case basis, waive the minimum length or number of school days where such minimums would create undue hardships provided that the school year is adjusted to ensure that students in the requesting school district or charter school receive the same total instructional time as students in the same grade elsewhere in the state. A hardship shall include but not be limited to:

(1) severe and prolonged acts of nature that render travel dangerous or impractical;

(2) natural disasters that affect a community after which rescue, repair and grieving are critical to the community's recovery;

(3) community or statewide health emergencies as where warnings about pandemics or epidemics have been issued by the department of health or the department;

(4) the passing or prolonged illness of key school staff;

(5) violent or other disruptive acts committed on school property that necessitate a lockdown or closure of a school.

G. No waiver request need be made to the secretary where, if based upon hardship, a school district or charter school declares a district-wide or school delay of two hours or less.

[12-31-98; 6.10.5.8 NMAC - Rn, 6 NMAC 11.4.8, 12-29-00; A, 11-13-09; A, 03-31-10]

6.10.5.9 TEMPORARY

PROVISION: Due to the passage of Laws 2010, Chapter 68 during the 2010 second session of the 49th legislature which finds that school districts need flexibility to meet state fiscal solvency requirements, for the 2009-2010 through 2011-2012 school years, the secretary may waive requirements in the Public School Code and corresponding rules pertaining to the length of school day.

A. No waiver under this provision may be granted or acted upon prior to May 19, 2010.

B. No waiver granted pursuant to this provision may extend beyond the end of the 2011-2012 school year.

C. The department shall monitor the issuance or denial of any such waivers.

D. The secretary shall report to the legislative education study committee and the legislative finance committee on any issues or actions of a school district that appear to adversely affect student learning.

[6.10.5.9 NMAC - N, 03-31-10]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.28 NMAC, Sections 2, 3 and 6 through 9, effective March 16, 2010.

1.10.28.2 SCOPE: This rule applies to any [primary] general election.

[1.10.28.2 NMAC - N, 9-30-2005; A/E, 3/16/2010]

1.10.28.3 STATUTORY

AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; [Chapter 270, Laws 2005] Chapter 336, Laws 2007.

[1.10.28.3 NMAC - N, 9-30-2005; A/E, 3/16/2010]

1.10.28.6 OBJECTIVE: [The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 270, Laws 2005. The purpose of the amendment is to ensure that each county clerk sends a voter identification card to every voter listed on the county register between sixty (60) and forty (40) days before each primary election.] The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 336, Laws 2007. The purpose of the amendment is to ensure that the secretary of state shall send a voter identification card to each active registered voter in each county between sixty (60) and seventy-five (75) days before each general election.

[1.10.28.6 NMAC - N, 9-30-2005; A/E, 3/16/2010]

1.10.28.7 DEFINITIONS:

A. **"County"** means any county in this state.

B. **"County register"** means an official file of original certificates of registration.

C. **"Primary election"** means the election held pursuant to Section 1-8-11 NMSA 1978. **"General election"** means the election held pursuant to Article XX, Section 6, constitution of New Mexico.

D. **"Voter"** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of New Mexico.

E. **"Voter file"** means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on data recording media and certified by the county clerk as the source of all information required by the Voter System Records Act (Section 1-5-1 through 1-5-31 NMSA 1978).

F. **"Voter's address"** means the address where the voter receives mail delivery.

G. **"Voter identification card"** means a card indicating the voter's name; address; [last four digits of the social security number; date of birth; election districts; party affiliation, if any and precinct polling place] and voting precinct and the name of the current county clerk in that county.

[1.10.28.7 NMAC - N, 9-30-2005; A/E, 3/16/2010]

1.10.28.8 VOTER

IDENTIFICATION CARD MAILING:

A. [Each county clerk shall, between sixty (60) and forty (40) days prior to a primary election, mail every voter in the county a voter identification card, based on information extracted from the county register and county voter file.] The secretary of state shall send a voter identification card to each active registered voter in each county between sixty (60) and seventy-five (75) days before each general election, based on information extracted from the county register and county voter file.

B. The voter identification card shall be mailed by first class mail to the voter's address.

[C. ~~Cardstock~~ and envelopes for the mailing shall be provided to each county clerk by the office of secretary of state.]

[1.10.28.8 NMAC - N, 9-30-2005; A/E, 3/16/2010]

1.10.28.9 SECRETARY OF STATE REIMBURSEMENT:

[A. ~~The office of the secretary of state, upon receiving documentation acceptable to the department of finance and administration from each county, shall reimburse the county for the cost of postage and other costs directly related to distribution of the cards.~~

~~B.] The secretary of state shall, pursuant to 1.10.26 NMAC and the National Voter Registration Act of 1993, instruct each county clerk to mark as inactive any voter whose identification card is returned as undeliverable.~~

[1.10.28.9 NMAC - N, 9-30-2005; A/E, 3/16/2010]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.2 NMAC Section 8, effective 04/02/10.

16.64.2.8 FEE SCHEDULE: The following schedule shall be applicable for fees collected by the board under the Thanatopractice Act:

A. Funeral service practitioner license:	
(1) application.	\$50.00
(2) licensure	\$150.00
(3) examination (jurisprudence).	[\$50.00] <u>\$100.00</u>
(4) renewal.	\$150.00
(5) penalty for late renewal.	\$75.00
B. Associate funeral service practitioner license:	
(1) application.	\$50.00
(2) licensure	\$150.00
(3) examination (jurisprudence).	\$50.00
(4) practical and oral examination.	\$300.00
(5) practical and oral examiner expenses.	actuals not to exceed \$500.00
(6) renewal.	\$150.00
(7) penalty for late renewal.	\$75.00
C. Assistant funeral service practitioner license:	
(1) renewal.	\$150.00
(2) penalty for late renewal.	\$75.00
D. Funeral service intern license - direct supervision:	
(1) Directing and arranging category:	
(a) application.	\$50.00
(b) licensure.	\$150.00
(c) renewal.	\$150.00
(d) penalty for late renewal.	\$75.00
(2) Preparation/embalming category:	
(a) application.	\$50.00
(b) licensure.	\$150.00
(c) renewal.	\$150.00
(d) penalty for late renewal.	\$75.00
E. Funeral service intern license - general supervision:	
(1) Directing and arranging category:	
(a) application.	\$50.00
(b) licensure.	\$150.00
(c) renewal.	\$75.00
(d) penalty for late renewal.	\$75.00
(2) Preparation/embalming category:	
(a) application.	\$50.00
(b) licensure.	\$150.00
(c) renewal.	\$75.00
(d) penalty for late renewal.	\$75.00
F. Direct disposer license:	
(1) application.	\$50.00
(2) licensure	\$150.00
(3) examination (jurisprudence).	[\$50.00] <u>\$100.00</u>
(4) renewal.	\$150.00
(5) penalty for late renewal.	\$75.00
G. Establishment license:	
(1) application.	\$50.00
(2) licensure	\$350.00
(3) renewal.	\$400.00
(4) penalty for late renewal.	<u>\$75.00</u>
H. Crematory license:	
(1) application.	\$50.00
(2) licensure	\$350.00
(3) renewal.	\$400.00
(4) penalty for late renewal.	\$75.00
I. Establishments and crematories - re-inspection:	
(1) re-inspection.	actuals not to exceed \$500.00
(2) first non-compliance penalty.	\$300.00
(3) Second non-compliance penalty (resulting from the first non-compliance. Third non-compliance, resulting from the second non-compliance, will be referred to the board with a recommendation for the issuance of a notice of contemplated action).	
	\$500.00

- J. Administrative fees:
- (1) copying costs. \$0.50/page
 - (2) lists of licensees. [~~\$10.00~~] \$75.00
 - (3) mailing labels of licensees. \$25.00
 - (4) return check. \$100.00
 - (5) reinstatement from inactive status (in addition to the renewal fee). \$175.00
 - (6) other (at the discretion of the board or its designee).

K. The only fee that may be refunded is the licensure fee, as subscribed in each subsection of 16.64.2 NMAC, only if a temporary license, if applicable, has not been issued. The board office will refund any amount due through the state of New Mexico refund process.

[11-21-86...9-26-93; 1-22-99; 16.64.2.8 NMAC - Rn & A, 16 NMAC 64.2.8, 09-15-01; A, 04-02-10]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.3 NMAC Section 8, effective 04/02/10.

16.64.3.8 APPLICATIONS:

A. All applications for licensure shall be on forms supplied by the board.

B. The board, in its sole discretion, may require an applicant for licensure to present whatever evidence or affidavits as it deems necessary to establish that the applicant is qualified for licensure.

C. The board may require applicants for licensure to personally appear before the board at the time the application is scheduled to be considered.

D. No application shall be considered complete nor acted upon unless the appropriate fee(s), as outlined in 16.64.2.8 NMAC accompanies the application.

~~[E.] E. The board administrator shall issue a temporary funeral service intern license for direct supervision categories upon being satisfied that the applicant has met all requirements for licensure. The temporary license is valid only until the next regular board meeting, at which time the board shall review the application.~~

~~F. The board administrator shall issue a temporary establishment or crematory license upon being satisfied that the applicant has met all requirements for licensure and upon successfully passing an inspection by the board or its designee. The temporary license is valid only until the next regular board meeting, at which time the board shall review the application.]~~

[G.] E. The burden of knowing and complying with the requirements necessary for licensure rests entirely on the applicant, however the board shall provide each applicant with copies of the applicable statutes and rules.

~~[H.] Applications for licensure must be received by the board office by the fifteenth (15th) day of the month prior to any regularly scheduled board meeting in order to be considered at~~

~~that meeting.]~~

[H.] E. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, for the exception of:

(1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and

(2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection [H] F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

[F.] G. If the application for licensure is deemed to be incomplete when twelve (12) months has elapsed from the date stamped on the application ~~[and/or]~~ or document the application and documents will be deemed null and void and any fees paid will be forfeited. Application and documents for licensure submitted to the board will be considered filed as of the date stamped on the application or documents by the board office, which shall be the date received by the board.

[2-7-76...6-15-96, 1-22-99; 16.64.3.8 NMAC - Rn & A, 16 NMAC 64.3.8, 09-15-01; A, 04-02-10]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.4 NMAC Section 9, effective 04/02/10.

16.64.4.9 MINIMUM REQUIREMENTS OF ESTABLISHMENTS:

A. To be licensed by the board, each funeral establishment shall have and maintain the following minimum requirements:

(1) a chapel in which funeral services may be conducted, which shall be at least six hundred (600) square feet (inside-wall-to-inside-wall) in size, and shall:

(a) have the capacity for seating not less than sixty (60) persons and for the proper display of a casket containing the deceased;

(b) have good ventilation;

(c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and

(2) a casket display room which shall be not less than four hundred fifty (450) square feet (inside-wall-to-inside-wall) in size and shall:

(a) contain burial caskets or a range of models and prices with not less than twelve different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and

(b) be adequately illuminated; and

(c) any rental casket considered for interment or cremation services shall have written disclosure as previously used merchandise; consent form shall be provided and signed by the surviving spouse or next of kin; and

(3) a preparation room which shall be not less than one hundred fifty (150) square feet (inside-wall-to-inside-wall) in size and shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation; and

(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

B. To be licensed by the board, each commercial establishment shall have and maintain the following minimum requirements:

(1) a preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC; and

(2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and

(3) commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC, provided the licensee in charge certifies to the board that the commercial establishment will not exceed

the provisions allowed for commercial establishments in the Thanatopractice Act.

C. To be licensed by the board, each direct disposition establishment shall have and maintain the following minimum requirements:

(1) a room for sheltering dead human bodies which shall:

(a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

(b) be equipped with necessary drainage, lighting and ventilation;

(c) have a refrigeration unit thermostatically controlled with a minimum storage area of twelve and one-half (12.5) cubic feet per body;

(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors;

(2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and

(3) if the establishment contains burial caskets ~~and/or~~ or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

D. To be licensed by the board, each funeral establishment shall:

(1) entirely complete a body tracking sheet as provided by regulation and licensing which shall be kept in the deceased file; and

(2) obtain and maintain body transport record log at the time of which the deceased is transported to the establishment which shall be kept in the deceased file; the log shall include:

(a) name of deceased;

(b) date of death;

(c) date and time placed in refrigeration;

(d) date and time removed from refrigeration;

(e) condition of body prior to transport;

(f) condition of body at the time of delivery;

(g) weather conditions during time of transport.

[2-7-76...9-26-93, 1-22-99; 16.64.4.9 NMAC - Rn & A, 16 NMAC 64.4.9, 09-15-01; A, 04-02-10]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.6 NMAC Section 8, effective 04/02/10.

16.64.6.8 GENERAL PROVISIONS:

A. Requests for approval of continuing education activities shall be submitted to the board on a form prescribed by the board. No license renewal shall be issued without board action if there exists any question by the board administrator as to the acceptance of a particular continuing education activity. The burden shall be on the licensee to ascertain from the board if a continuing education activity is acceptable, and to provide proof of completion of the continuing education activity for the renewal period.

B. Ten (10) hours of continuing education shall equal one (1) continuing education unit (CEU).

C. Regardless of what part of the year a person becomes licensed, there shall be no reduction or pro-rating of continuing education hours required for the next renewal period; provided however, that any person who was first licensed during the same renewal period as he or she graduated from an accredited school of funeral service education shall not be required to earn continuing education for the next renewal.

D. Any person who holds more than one license issued by the board may use the same continuing education hours for renewal of both licenses without having to earn separate continuing education hours for each license renewal.

~~[E. Fifty (50) percent of the annual continuing education requirement earned in excess of the annual requirement may be carried over to the next renewal period.]~~

[9-14-88...9-26-93; 16.64.6.8 NMAC - Rn & A, 16 NMAC 64.6.8, 09-15-01; A, 04-02-10]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.7 NMAC Section 9, effective 04/02/10.

16.64.7.9 INACTIVE STATUS:

A. Any licensee, excluding assistant funeral service practitioner and funeral service intern licensees, who wishes to place his or her license on inactive status shall notify the board in writing, on a form prescribed by the board, prior to the expiration of his or her current license.

~~B. [The board shall determine, at its next meeting, if the inactive status of any license will be approved.]~~

The board administrator shall determine if the inactive status of any license will be approved until the next scheduled board meeting.

C. Upon approval by the board of an inactive request, the licensee shall be exempt from the payment of the ~~[yearly]~~ annual renewal fee during the period of inactive status.

D. No license will automatically be placed on inactive status by failure of the licensee to renew his or her license.

E. No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

F. Any licensee who has placed his or her license on inactive may, within five (5) years from the date of acceptance by the board of the inactive status, notify the board of his or her desire to reinstate the inactive license. Upon receipt of such notice, the board administrator shall send to the inactive licensee an application for reinstatement.

G. The applicant shall submit the application to the board together with the applicable fee(s) and proof of completion of one (1) CEU, as outlined in 16.64.6 NMAC, for the year in which reinstatement is sought.

H. If the board finds the application in order, the applicant shall be issued a license after successfully completing the written jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC. No person whose license is on inactive status shall practice funeral service in this state until receiving a reinstated license.

I. Any person who, after five (5) years of inactive status, desires to reinstate his or her license, must make application to the board and comply with the same requirements as any previously unlicensed applicant.

J. If a request for reinstatement of an inactive license occurs in the same renewal period, as defined in Subsection C of 16.64.6.7 NMAC, that the inactive status was granted, the applicant shall not be required to complete additional continuing education requirements or the jurisprudence exam in order for the inactive license to be reinstated.

[9-27-90...9-26-93; 16.64.7.9 NMAC - Rn & A, 16 NMAC 64.7.9, 09-15-01; A, 04-02-10]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.8 NMAC Section 8, effective 04/02/10.

16.64.8.8 GENERAL PROVISIONS:

A. Each funeral service intern shall inform the board, on quarterly reports prescribed by the board, of the work completed by the funeral service intern, and the name(s) of the funeral service practitioner(s) who supervised each activity, and shall be for the periods as follows, until such time as the minimum requirements are met, as determined by the board:

(1) July 1 thru September 30, inclusive;

(2) October 1 thru December 31, inclusive;

(3) January 1 thru March 31, inclusive;

(4) April 1 thru June 30, inclusive.

B. Original quarterly reports shall be due at the office of the board within thirty (30) days of the close of the quarter (faxed reports will not be accepted). Any quarter for which a report is not received by the date due shall not count as time toward the internship.

C. A funeral service intern may be employed by, or receive training at, more than one (1) funeral ~~and/or~~ or commercial establishment concurrently provided that:

(1) the establishments are part of the same company;

(2) the establishments are within 50 miles by road travel of each other; and

(3) application is made, together with the application fee for each license held, thirty (30) days prior to employment or training.

D. A funeral service intern shall make it known that he or she is a funeral service intern under the supervision of a funeral service practitioner, and that he or she is not licensed as a funeral service practitioner nor the licensee in charge.

E. A funeral service intern shall not use the title funeral director and shall use the title funeral service director intern. The titles funeral practitioner, funeral director or mortician are reserved for fully licensed practitioners in order to prevent the general public from misunderstanding the terms.

[E:] F. A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

(1) when a funeral service intern has ~~["made arrangements"]~~ made arrangements for fifty (50) funerals under direct supervision, he or she may

request approval from the board to make arrangements under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (3) of Subsection [E] F of 16.64.8.8 NMAC, the fees shall not be required; and

(2) when a funeral service intern has ~~["assisted in embalming"]~~ assisted in embalming of fifty (50) bodies under direct supervision, he or she may request approval from the board to embalm under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees; and

(3) when a funeral service intern has ~~["assisted in the directing"]~~ assisted in the directing of fifty (50) funerals, committal services, grave side services or memorial services under direct supervision, he or she may request approval from the board to direct such services under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (1) of Subsection [E] F of 16.64.8.8 NMAC, the fees shall not be required.

[F:] G. A funeral service intern shall not practice funeral service in any category under general supervision until application is made, together with the required fees, and approval has been granted by the board.

[G:] H. A funeral service intern shall ~~not~~ be required to ~~["make arrangements"]~~ make arrangements during his or her internship in order to qualify for a license as a funeral service practitioner.

[H:] I. A funeral service intern shall not be required to practice funeral service under general supervision in any category regardless of the amount of time served or work completed as a funeral service intern.

[I:] J. A funeral service intern who is practicing funeral service under general supervision in any category shall be subject to the continuing education requirements of 16.64.6 NMAC.

[J:] K. A funeral service intern may receive training under more than one (1) licensed funeral service practitioner, provided the board is notified, in writing, of any changes within thirty (30) days following a change.

[K:] L. Any time served, and properly reported to the board, as a resident trainee under prior law will be considered the same as time served as a funeral service intern.

[L:] M. A funeral service intern who is practicing funeral service under general supervision in any category

is required to have the licensed funeral service practitioner review and co-sign all documents and contracts prepared by the funeral service intern.

[M:] N. A funeral service intern who has a change of employment shall:

(1) return the old license; and

(2) make application for each license held, together with the application fee for each license held as outlined in Subsection D ~~and/or~~ or E of 16.64.2.8 NMAC, within thirty (30) days of the change.

[9-14-88...9-26-93, 6-15-96, 1-22-99; 16.64.8.8 NMAC - Rn & A, 16 NMAC 64.8.8, 09-15-01; A, 04-02-10]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.11 NMAC Section 9, effective 04/02/10.

16.64.11.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant and respondent.

B. Upon receipt of a complaint the board's designee will:

(1) log in the date the complaint was received;

(2) determine whether the respondent is licensed, or an applicant for licensure with the board;

~~[(3) assign a complaint number and create an individual file; complaint numbering will begin with the last two digits of the year in which the complaint is filed, followed by the month, and will then continue sequentially (e.g., 96-01-001 = first complaint filed in January 1996);]~~

[4:] (3) send the complainant written acknowledgment of receipt of the complaint; and

~~[(5)]~~ (4) immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s).

[2-21-97, 1-22-99; 16.64.11.9 NMAC - Rn, 16 NMAC 64.11.9, 09-15-01; A, 04-02-10]

NEW MEXICO BOARD OF THANATOPRACTICE

This is an amendment to 16.64.12 NMAC Section 1, effective 04/02/10.

16.64.12.1 ISSUING AGENCY:

~~[Regulation and Licensing Department, Board of Thanatopractice, P.O. Box 25101, Santa Fe, New Mexico 87504,(505)]~~

476-7090.] New Mexico Board of
Thanatopractice
[6-15-96; 16.64.12.1 NMAC - Rn, 16
NMAC 64.12.1, 09-15-01; A, 04-02-10]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 16
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Issue Number 17	September 1	September 15
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Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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