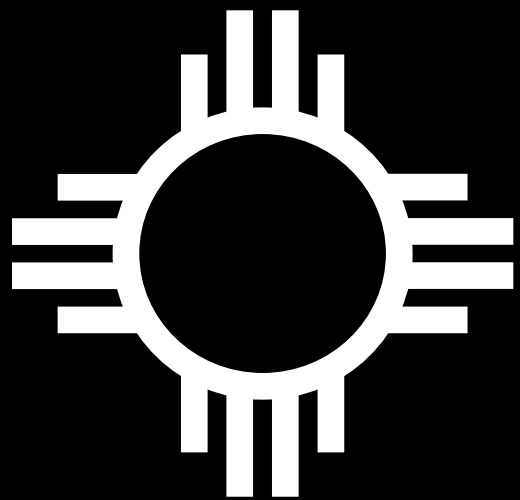


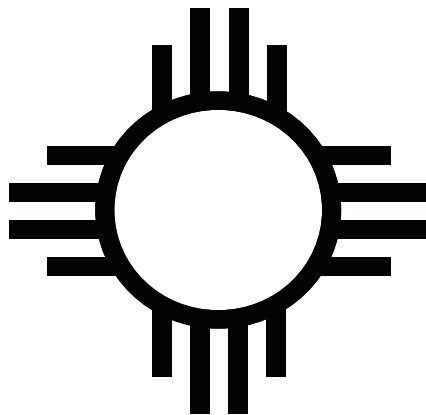
**NEW
MEXICO
REGISTER**



Volume XXII
Issue Number 15
August 15, 2011

New Mexico Register

Volume XXII, Issue Number 15
August 15, 2011



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
2011

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New Mexico Register

Volume XXII, Number 15

August 15, 2011

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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

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

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

Notices of Rulemaking and Proposed Rules

**NEW MEXICO
DEPARTMENT OF FINANCE
AND ADMINISTRATION
BOARD OF FINANCE**

**NOTICE OF BOARD OF FINANCE
RULE**

The State Board of Finance is in the process of revising one of its rules: Voting Machine Acquisition. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe, NM 87501 and on the Board of Finance website, http://nmdfa.state.nm.us/Board_of_Finance.aspx. The Board will consider adopting the proposed rule at its September 20, 2011 meeting, which takes place at 9:00 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Stephanie Schardin Clarke, 181 Bataan Memorial building, Santa Fe, NM 87501 by September 14, 2011.

**NEW MEXICO
DEPARTMENT OF FINANCE
AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

**Notice of Hearing of
Amendments to Rule 2.110.2 NMAC
Small Cities Community Development
Block Grants**

New Mexico Department of
Finance and Administration

The Department of Finance and Administration ("DFA") hereby gives notice that DFA will conduct a public hearing in Room 317, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on September 29, 2011 at 9:00 a.m. concerning amendments 2.110.2.11 NMAC, 2.110.2.15 NMAC, 2.110.2.17 NMAC, 2.110.2.19, NMAC, 2.110.2.21, NMAC, 2.110.2.26, Attachment 2.110.2.14 NMAC, Small Cities Development Block Grants (hereinafter referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on September 15, 2011, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, and Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of

the text of the proposed CDBG Rule are available from Ms. Dolores Gonzales, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4972 or from the DFA internet website. <http://www.dfaintranet/indexdfa.html>

These are amendments to 2.110.2.11, 2.110.2.15, 2.110.2.17, 2.110.2.19, 2.110.2.21, 2.110.2.26, Attachment to 2.110.2.14 effective XX,XX,XXXX.

**NEW MEXICO GAME
COMMISSION**

**STATE GAME COMMISSION PUBLIC
MEETING
AND RULE MAKING NOTICE**

On Thursday, August 25, 2011, beginning at 9:00 a.m., at the **Santa Fe Community College - Jemez Rooms 2-3, 6401 Richards Avenue, Santa Fe, NM 87508**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations; Final Overview and Approval of the Department's Fiscal Year 2013 Budget and Capital Outlay Request; Reservation of Two (2) Elk Licenses for Non-profit Wish-Granting Organizations; Proposed Amendment of Guide and Outfitter Registration Rule (19.30.8, NMAC); Prospective Legislative Initiatives; General Public Comments (comments limited to 3 minutes); Update on Rio Grande Cutthroat Trout Management; Desert Bighorn Sheep Delisting Process Update; Silver City Deer Management Issues/Overview; and Habitat Stamp Program Issues.

The following rules are available for public comment and discussion by the Commission:

* Amending the Barbary Sheep, Oryx, and Persian Ibex Rule, 19.31.12, NMAC, to Make Available Up to Three (3) Oryx Authorizations Annually for Wounded Warrior Project Participants.

A copy of the agenda and 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) 476-8027. Please contact Ms. Quintana at least 3 working days before the meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms upon request.

**NEW MEXICO PUBLIC
EDUCATION DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION
DEPARTMENT**

**NOTICE OF PROPOSED
RULEMAKING**

The Public Education Department hereby gives notice that the Department will conduct a public hearing at the Bataan Memorial Building, 407 Galiseo, "Old Senate Chambers", 2nd floor Fin; Santa Fe, NM 87501-2786, on September 16, 2011 from 9:00 a.m. to 11:30 a.m. The purpose of the public hearing will be to obtain input on the following rules:

[Continued on page 548]

Rule Number	Rule Name	Proposed Action
6.11.2 NMAC	Public School Administration- Student Rights and Responsibilities of the Public Schools and Public School Students	Amend 6.11.2.10.E Corporal Punishment
6.12.2 NMAC	Public School Administration – Health and Safety Health Services	Amend
6.12.9 NMAC	Elementary School Free Breakfast Program During Instructional Time	New
6.19.6 NMAC	Public School Accountability Title I Supplemental Educational Services	Amend
6.29.1 NMAC	Standards for Excellence General Provisions	Amend

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Dr. Kristine M. Meurer, Director, School and Family Support Bureau, New Mexico Public Education Department, 120 S. Federal Place, Santa Fe, New Mexico 87501 (Kristine.Meurer@state.nm.us) (505)-827-1804 fax (505) 827-1826.

Written comments must be received no later than 5:00 p.m. on September 16, 2011. However, submission of written comments as soon as possible is encouraged.

The proposed rulemaking actions may be accessed on the Department’s website (<http://ped.state.nm.us>) or obtained from Dr. Kristine M. Meurer, Director, School and Family Support Bureau, New Mexico Public Education Department, 120 S. Federal Place, Santa Fe, New Mexico 87501 (Kristine.Meurer@state.nm.us) (505)-827-1804 fax (505) 827-1826. The proposed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Brandi De La Riva (brandi.delivera@state.nm.us) or at (505) 827-1421 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, August 23, 2011, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by August 15, 2011. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the meeting.

NOTICE OF RULEMAKING

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

Repeal

1.18.366 NMAC E R R D S ,
Public Employees Retirement Association

New-Replacement

1.18.366 NMAC E R R D S ,
Public Employees Retirement Association

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION**

**of the
Regulation and Licensing Department**

NOTICE OF PUBLIC HEARINGS

Public hearings on the proposed changes to the following CID Rules: NMAC 14.10.4, 2011 NM Electrical Code; NMAC 14.6.6.10 B (1) (a-c), Electrical classifications for EE-98 and EL-01; NMAC 14.8.3, NM Swimming Pool, Spa, and Hot Tub Code; NMAC 14.9.6, NM Solar Energy Code; 14.7.6 NMAC, 2009 NM Energy Conservation Code and 14.9.2 NMAC, 2009 NM Mechanical Code; will be held as follows:

September 9, 2011, 9:00 a.m. - 12:00 p.m.:
SANTA FE, NM - CID Conference Room,

2550 Cerrillos Road, Santa Fe, NM.

September 9, 2011, 9:00 a.m. - 12:00 p.m.:
LAS CRUCES, NM - CID Conference Room, 505 South Main Street, Suite 150, Las Cruces, NM.

September 9, 2011, 9:00 a.m. - 12:00 p.m.:
ALBUQUERQUE, NM - CID Conference Room, 5200 Oakland Avenue NE, Albuquerque, NM.

Copies of the proposed rules are currently available on the Construction Industries Division’s website: www.rld.state.nm.us/cid and at the CID office in Santa Fe. You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. **All comments must be received no later than 5:00 p.m., on September 8, 2011. If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than September 6, 2011.** Telephone: 505-476-4686. Email: www.rld@state.nm.us/cid Fax No. 505-476-4685.

**End of Notices and Proposed
Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

This is an amendment to 8.26.4 NMAC, Sections 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 21 effective August 15, 2011.

8.26.4.2 SCOPE: ~~[All agencies in New Mexico providing foster care and adoption licensing, protective services staff, children placed in PSD custody, individuals applying for or licensed as a foster or adoptive parent in New Mexico, and parents or guardians whose child is placed in PSD custody.] PSD staff and all PSD licensed agencies providing foster care services in New Mexico.~~

[8.26.4.2 NMAC - Rp, 8 NMAC 27.3.2, 5/29/09; A, 8/15/11]

8.26.4.6 OBJECTIVE: To create uniform standards for licensing of foster care and adoptive homes in New Mexico which are consistent with the best interest, safety, permanency, and well-being of children by:

A. enabling protective services division or licensed child placement agencies to license and monitor foster and adoptive homes;

B. enabling protective services division to set standards for the application and operation of foster and adoptive homes to protect the best interest of children in foster or adoptive placement; and

C. complying with the 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, as amended by the Inter-Ethnic Adoption Provisions of 1996, the Safe and Timely Interstate Placement of Foster Children Act, the Adam Walsh Act, ~~[and] the Fostering Connections for Success and Increasing Adoptions Act and the Child Abuse Prevention and Treatment Act Reauthorization of 2010.~~

[8.26.4.6 NMAC - Rp, 8 NMAC 27.3.6, 5/29/09; A, 8/15/11]

8.26.4.7 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 in which may include an informal conference or a 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. "Adoptive home" refers to:

(1) a foster family licensed by PSD or by a licensed child placement agency who chooses to adopt a foster child; or

(2) a family approved by PSD and a private agency or a licensed individual to adopt a child.

F. "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] service~~ 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 PSD.

G. "Applicant" is any person who applies to be considered as a potential foster care provider, treatment foster care provider, or an adoptive family.

H. "Application" is the document by which persons who wish to become foster or adoptive parents request an assessment of their home and family, and the issuance of a license. The document also authorizes the department or licensed child placement agency to obtain relevant information from the applicant and other authorized persons in order to conduct an assessment of the applicant's qualifications. The applicant shall certify that there are no willful misrepresentations in the application.

I. "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.

J. "Child abuse and neglect check" is a review of the PSD

information management system (also known as FACTS), or another state's central abuse or neglect registry to determine if there have been any previous referrals on the family to this state's or any other state's child protective services division.

K. "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 a child placement agency or protective services.

L. "Concurrent planning" refers to case planning and legal practices providing reunification services while simultaneously implementing an alternative case plan.

M. "Criminal records check (CRC)" means federal, state or local checks for criminal offenses conducted by CYFD on potential and current foster and adoptive parents, and of all adults living in the foster or adoptive home.

N. "CYFD" means the New Mexico children, youth and families department.

O. "FACTS" means the PSD management information system.

P. "Fictive kin" is a person not related by birth or marriage who has an emotionally significant relationship with the child.

Q. "Foster child" is a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children's Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division.

R. "Foster home" refers to a person or persons licensed by PSD, or a licensed child placement agency to provide foster care services including emergency, respite, non-relative, relative, or treatment foster care. The persons may also be concurrently licensed to adopt

S. "Foster home license" is the document which bears the name or names and address or addresses of those who are foster parents for the protective services division or licensed child placement agency. The license displays the ~~[gender,] ages and number of foster children the licensee is authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized~~

person who issued the license.

T. "Foster parent" is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for foster children. Throughout this policy, the term foster parent also refers to an adoptive parent whose adoption has not yet finalized.

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.

V. "Licensing agent" means the individual with the proper credential and qualifications conducting a home study.

W. "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.

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

Y. "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.

Z. "Respite care" means a licensed foster parent(s) who are able to care for foster children for short periods of time when the child's original foster parents are unable to provide care.

AA. "SAFE" means the structured analysis family evaluation home study format, which is the only home study format approved for use in New Mexico.

BB. "Specialized foster home" means a family foster home licensed by PSD in which at least one adult has the required education, training or experience necessary to care for a child who has been certified as special needs.

CC. "Treatment foster care home" is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement. [8.26.4.7 NMAC - Rp, 8 NMAC 27.3.7 & 8.27.2.7 NMAC, 5/29/09; A, 8/15/11]

8.26.4.8 ELIGIBILITY TO FOSTER OR ADOPT:

A. Any adult age [eighteen (18)] 18 or older who is a legal resident of the United States and who is a resident of New Mexico can apply to become a licensed foster parent.

B. A petition for adoption may be filed in New Mexico by any adult,

age [eighteen (18)] 18 or older, who:

(1) is a New Mexico resident as defined in the Adoption Act, 32A-5-3(Y) NMSA 1978, and pursuant to the Adoption Act, 32A-5-11(B) NMSA 1978; or

(2) is a non-resident, who meets the requirements pursuant to the Adoption Act, 32A-5-11(C) NMSA 1978, and the child was placed by [the department] CYFD or a New Mexico licensed child placement agency and the adoptee is a resident of New Mexico or was born in New Mexico, but is less than six months of age.

C. Any adult seeking to adopt a child in PSD custody must be approved as an adoptive parent and licensed as a foster parent.

D. CYFD employees who meet all licensing requirements may serve as foster or adoptive parents. A CYFD employee is not allowed to foster or adopt any child with whom he or she is working with in an official capacity.

E. A foster or adoptive family may be a single parent, a married couple or an unmarried couple.

F. No persons shall be licensed as foster parents whose own children are currently in foster care. Persons whose children have been formerly in foster placement may be licensed if the assessment of their application determines that the problems leading to the placement have been resolved.

G. To be considered for a PSD foster parent license issued by PSD, applicants shall have sufficient income, apart from the reimbursement, to support themselves and their families.

H. PSD recruits foster and adoptive families who demonstrate the ability to care for children in PSD custody and may deny applicants who are not willing to accept children in PSD custody. [8.26.4.8 NMAC - N, 5/29/09; A, 8/15/11]

8.26.4.9 APPLICATION FOR INITIAL LICENSURE:

A. All persons wishing to become licensed foster parents or an eligible adoptive home for PSD or for a child placement agency must:

- (1) complete an application form;
- (2) consent to a home study;
- (3) consent to a criminal records check and child abuse and neglect check; and
- (4) complete the required pre-service training.

B. Applicants shall complete and sign the foster home licensing application provided by PSD or licensed child placement agency. The application shall include but not be limited to the following:

(1) demographic data such as name, address, telephone number; date of

birth of all persons living in or frequently residing in the home;

(2) previous addresses for the past five years, including the dates;

(3) at least three [(3)] year employment history preceding the date of application, if applicable;

(4) a statement from the applicant asserting that, if approved for license, the applicant shall adhere to the applicable statutes and regulations applying to foster or adoptive homes and their responsibilities which shall include:

(a) working with children and families on reunification or alternate case plan;

(b) working with PSD or an agency to ensure placement stability, such as accepting only children who can remain in the placement until adopted or discharged from care;

(c) ensuring that the safety of children is paramount;

(d) adherence to foster parent responsibilities as set forth in Placement Services, 8.26.2.12 NMAC.

(5) each applicant shall submit the names, addresses and telephone numbers of three [(3)] non-related persons who have knowledge of the applicant character and suitability to be foster or adoptive parents; in addition to the names, addresses and telephone numbers of all adult children residing out of the home shall be provided for references;

(6) a statement of monthly income and expenditures;

(7) information regarding past or present medical conditions and hospitalizations, including any institutionalization or treatment for behavioral disorders for all adults and children living in the home;

(8) a summary of current and past marriages and significant adult interpersonal relationships;

(9) a history of any application or licensure for [~~adoptive home or~~] foster care or adoptive homes in this or any other state; if such history exists the application shall also include a PSD approved notification form signed by the applicant that will serve the purpose of notifying the previous agency of the applicant's application to the new agency and allow the release of assessment information and the home study to any agency considering the foster or adoptive family;

(10) a history of arrests [~~or referrals to~~] and investigations by PSD; and

(11) signature and date: the applicant's signature shall certify the information provided in the application form is true and complete and the application contains no willful misrepresentation.

[8.26.4.9 NMAC - Rp, 8 NMAC 27.3.10 & 8.27.2.14 NMAC, 5/29/09; A, 8/15/11]

8.26.4.10 **C R I M I N A L RECORDS CHECKS (CRC):** All persons wishing to become licensed foster parents or an eligible adoptive home for PSD or for a child placement agency must complete a criminal records check.

A. CRCs are required for all applicants and adults living in the foster or adoptive home.

B. CYFD CRC unit conducts federal and state criminal records checks for all applicants and adults living in the home. PSD placement staff or agency staff shall submit to the CYFD CRC unit two completed finger print cards for each applicant and adult living in the applicant's home. Agency staff shall also submit a certified check or money order payable to CYFD protective services division for the required fingerprinting fee for each applicant and adult living in the applicant's home. (Finger print packets including cards and instructions may be obtained from the CRC unit.)

C. PSD and agency staff shall conduct an additional criminal record check of the applicant and all adults living in the applicant's home through a search of nmcourts.com.

D. Licensure shall not be approved in any case in which the CRC results for the applicant or any adult living in the applicant's home reveal any of the following federally mandated automatic disqualifiers:

(1) a felony conviction for child abuse or neglect;

(2) a felony conviction for spousal abuse;

(3) a felony conviction for a crime against children, including child pornography;

(4) a conviction for any crime involving violence such as rape, sexual assault, or homicide, but does not include other physical assault or battery; or

(5) a felony conviction within the past five years for physical assault, battery, or a drug related offense.

E. Applicants who have a conviction for crimes other than those noted above are not automatically disqualified; however this information shall be used to determine suitability for licensure. All police or court records relating to the applicant or other adult living in the home shall be considered in determining suitability for licensure.

F. The home study process for any applicant or adult living in the home with a pending criminal charge and no disposition shall be closed. The applicant may reapply after disposition of the charge. [8.26.4.10 NMAC - Rp, 8.27.2.16 NMAC, 5/29/09; A, 8/15/11]

8.26.4.11 **CHILD ABUSE AND**

NEGLECT CHECK:

A. For families applying to be licensed by PSD, staff shall conduct a FACTS review for abuse and neglect referrals on the applicant and all adults living in the applicant's home. If the applicant or any other adult living in the home resided in any state(s) other than New Mexico in the five years prior to the date of the application, PSD shall request that each such state review its abuse and neglect information system or registry for information on the applicant or other adults living in the home and submit the results of that review to PSD.

B. For families seeking to become foster or adoptive homes through agencies other than PSD, the agency shall submit, at the time they submit finger print cards, a signed PSD approved "abuse and neglect check for prospective foster or adoptive parents" form to request that the CRC unit conduct a FACTS review for abuse and neglect referrals on the applicant and each adult living in the applicant's home. If the applicant or any other adult living in the home resided in any state(s) other than New Mexico in the five years prior to the date of the application, the agency shall request that each such state review its abuse and neglect information system or registry for information on the applicant or other adults living in the home and submit the results of that review to PSD.

C. If the applicant or any adult living in the applicant's home has been the subject of a substantiated allegation of sexual exploitation or sexual abuse of a child, or has been substantiated for child abuse that resulted in a child fatality, then the applicant shall not be licensed.

D. In the event of a substantiated report of child abuse or neglect, other than substantiated sexual exploitation or sexual abuse as listed above, involving the applicant or any adult living in the home, the application is assessed on a case-by-case basis to determine if the safety of any child in the home can be assured. This information shall be used to determine suitability for licensure.

E. Persons who have been referred to PSD for investigation of allegations of child abuse or neglect or exploitation may be considered for licensure. The best interest of children is paramount. Licensure may be denied based on the professional judgment of the licensing agent.

F. The home study process for any applicant or adult living in the applicant's home with a pending child abuse or neglect investigation and no disposition shall be closed. The applicant may reapply when the investigation is complete.

[8.26.4.11 NMAC - Rp, 8.27.2.17 NMAC, 5/29/09; A, 8/15/11]

8.26.4.12 **A S S E S S M E N T**

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 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 [(+)] 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)] 120 days for non-relative foster or adoptive homes, and [~~ninety~~ (90)] 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; A, 8/15/11]

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 [(+)] box of non-medicated adhesive bandages;

(b) one [(+)] pair of blunt scissors;

(c) one [(+)] roll of two [(2)] inch or three [(3)] inch adhesive roller bandage;

(d) one [(+)] roll of one-half [(+/-)] inch adhesive tape;

(e) one [(+)] box of sterile first aid dressings in sealed envelopes;

(f) first aid cream [~~and/or~~] 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)] 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)] 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)] 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, the licensing agent will check the 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 listed as a

contaminated property. This verification shall be documented in the home study. Homes that are listed as contaminated properties shall not be licensed. For homes that have been previously licensed, the licensing agent shall check the clandestine drug laboratories in New Mexico website at the time of re-licensure. If a home has not been listed as a contaminated property, the licensing agent need not check the home again in further re-licensure.

~~[(12)]~~ (11) 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; A, 8/15/11]

8.26.4.14 FOSTER AND ADOPTIVE PARENT TRAINING:

A. All foster and adoptive parent applicants licensed by PSD and all foster care applicants licensed by child placement agencies shall successfully complete the required pre-service training prior to being licensed in New Mexico.

B. All foster and adoptive parents licensed by PSD and all foster parents licensed by child placement agencies shall participate in at least twelve hours of PSD or agency approved training each year. ~~[The specific content of six of the twelve required training hours shall be mandated by PSD foster care and adoption bureau. The remaining hours are determined by the foster family and approved by their PSD worker. The foster parent shall obtain and the PSD worker or agency worker shall document training hours in FACTS or in the agency record prior to annual re-licensure.]~~

(1) Foster parents licensed by PSD: Six of the twelve hours required training hours shall be determined by the PSD foster care and adoption bureau. The remaining hours shall be determined by the foster family and shall be approved by their PSD worker. The PSD worker shall document training hours in FACTS prior to annual re-licensure.

(2) Foster parents licensed by child placement agencies: Child placement agencies shall provide a minimum of twelve hours of training annually to their licensed families. PSD may in its sole discretion mandate the specific topics in those twelve hours.

[8.26.4.14 NMAC - Rp, 8 NMAC 27.3.12 & 8.27.2.15 NMAC, 5/29/09; A, 8/15/11]

8.26.4.15 INITIAL FOSTER HOME LICENSE:

A. A foster home license shall be granted or denied based upon the assessment and participation in the licensing process. The issuance of a foster parent license is not an entitlement.

B. The applicant and adults living in the home shall complete all

licensing requirements before the home can be licensed.

C. A license is only valid for the physical location reviewed during the assessment of the application. Licensed foster parents shall notify the licensing agent prior to moving to a new address. If the new residence meets licensing standards, the licensing agent shall issue a new license within [thirty (30)] 30 days for the remainder of the licensing period. A foster home license is not transferable.

D. A foster home license shall be valid for a period of two [(2)] years from the date of issuance.

E. An initial foster parent agreement outlining the stipulations of licensure shall be reviewed by the licensing agent and the foster parent. Signing of the agreement is an acknowledgement that the stipulations are understood and accepted by all concerned. The initial agreement shall be signed prior to placing children in the home.

F. The maximum number of children in a foster home shall be determined by space limitations and the ability of the foster parent(s) to provide for adequate physical and emotional care. For homes licensed by PSD, a maximum number of six [(6)] is recommended, and any more than six [(6)] children including children already living in the home must be approved the PSD regional managers.

G. No foster home shall be concurrently licensed or certified by more than one licensing entity, unless necessary for the purpose of adoption with approval from the PSD director.

[8.26.4.15 NMAC - Rp, 8 NMAC 27.3.17 & 8.27.2.23 NMAC, 5/29/09; A, 8/15/11]

8.26.4.16 RELATIVE FOSTER CARE:

A. Relatives who provide foster care to children in PSD custody must be licensed.

B. A child in PSD custody may be placed on a provisional basis with a relative provided that the PSD worker:

(1) completes the initial relative assessment by collecting and assessing the following information:

(a) the child's attitude toward the prospective caregiver;

(b) the prospective caregiver's attitude toward the child and parents;

(c) the prospective caregiver's motivation to foster the child;

(d) the prospective caregiver's ability to safely parent the child;

(e) local background records check that does not contain a disqualifying conviction;

(f) a check of nmcourts.com for a disqualifying conviction;

(g) check of CYFD management information system for a referral history

with PSD; and

(h) completion of the physical standards checklist;

(2) obtains supervisory approval.

C. The safety of the child is the primary consideration. If this is ever in conflict with the placement of the child with a relative, PSD makes the placement decision in favor of the child's safety.

D. A provisional license is limited to ~~[sixty (60)]~~ 60 days with one possible ~~[thirty (30)]~~ 30 day extension at the discretion of the PSD deputy director. When a child is placed in the home under a provisional license, the relative foster parents are expected to complete all requirements of foster home licensing within ~~[sixty (60)]~~ 60 days of placement. Failure to meet these requirements within the ~~[sixty (60)]~~ 60 day time frame shall result in the removal of the child.

[8.26.4.16 NMAC - Rp, 8.27.2.24 NMAC, 5/29/09; A, 8/15/11]

8.26.4.17 TYPE OF LICENSES:

A. Provisional license: A provisional license is a license issued by PSD to a relative upon satisfactory completion of the relative initial assessment. A provisional license may be issued to facilitate or expedite placement of a child with a relative. A provisional license is valid for ~~[sixty (60)]~~ 60 days, with the possibility of one ~~[thirty (30)]~~ 30 day extension as described herein at Subsection D of 8.26.4.16 NMAC.

B. Family foster home license: A two ~~[(2)]~~ year license issued by PSD only after all licensing requirements have been completed.

C. Specialized foster home license: A license issued by PSD to a family foster home in which at least one adult has the PSD specified education or training necessary to care for a child needing specialized care. Such homes are limited to no more than three ~~[(3)]~~ special needs certified children who need specialized care. When there are three ~~[(3)]~~ special needs children in placement, no other children shall be placed.

D. Treatment foster care license: A license issued by a child placement agency to a family foster home to accept a child requiring intensive services when the agency has met both the child placement agency licensing regulations, and the treatment foster care standards contained in Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC. PSD does not license treatment foster care homes.

[8.26.4.17 NMAC - Rp, 8 NMAC 27.3.16, 5/29/09; A, 8/15/11]

8.26.4.18 UPDATES AND RENEWAL OF FOSTER HOME

LICENSE:

A. The licensing agent shall conduct an annual review of each foster home to include:

(1) documentation of completion of the training requirements as described herein at Subsection B of 8.26.4.14 NMAC;

(2) a check of FACTS is conducted on all adults living in the home;

(3) a check of nmcourts.com shall be conducted on all adults living in the home;

(4) a review of the agreement between the foster parent, licensing agency, and PSD or child placement agency; the agreement shall be signed again to cover the remainder of the licensing period or the new licensing period;

(5) a review of placements made during the year, identification of strengths and training needs, and a review of current policies affecting foster care; and

(6) a review with the foster parent their duty to disclose any arrests or abuse and neglect referrals.

B. Foster families must meet the following re-licensure requirements every two ~~[(2)]~~ years. The SAFE home study update shall be used for re-assessment for re-licensure. The reassessment shall include all requirements listed above in Paragraphs (1) - (5) of Subsection A of 8.26.4.18 NMAC.

C. Before the end of the licensure period, both foster parents and PSD or licensed child placement agency shall ensure that all requirements are met to qualify the family for a renewed license.

D. PSD or child placement agency foster home licenses shall be issued every two ~~[(2)]~~ years, if they continue to meet requirements

[8.26.4.18 NMAC - Rp, 8 NMAC 27.3.17, 5/29/09; A, 8/15/11]

8.26.4.19 DENIAL, 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)]~~ 10 days of the decision.

(3) Applicants who have been denied an initial foster parent license may request an administrative review of the ~~[decision]~~ reasons for the denial of the initial license. 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]~~ the licensing agent 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 PSD ~~or~~ an agency without seeking support services provided by PSD ~~or~~ 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 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.]~~ provide the foster family the opportunity to request an appeal before an impartial hearing officer appointed by or approved by the CYFD secretary where the family has the opportunity to present evidence on their behalf and to be assisted by counsel. The foster family shall request an appeal within 10 days of receipt of the notification of the proposed action. If the family does not request an appeal within the 10 days, then the decision to revoke, suspend or not renew a license shall be final.

E. Reinstatement or reissuance of 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; A, 8/15/11]

8.26.4.21 DOCUMENTATION [AND RECORDS] RELATED TO LICENSING OF FOSTER AND ADOPTIVE HOMES:

A. Maintenance of records: ~~[The licensing agent shall maintain records related to the application and licensing of~~

~~foster and adoptive parents.]~~

(1) Foster home parent files: The agency ~~[or]~~ and PSD shall maintain records concerning the evaluation of a foster home, including but not limited to the application, assessment information, recertification of information, releases of information, criminal records and background checks, medical examination records, a copy of the foster home license and correspondence. [For families licensed by PSD, PSD maintains the records for ten (10) years after the case is closed and then transfers them to archives as set forth in 1.18.690.30 NMAC. For families licensed by agencies, records shall be transferred to a subsequent agency or to CYFD upon closure.] PSD and licensed agencies shall retain records concerning the evaluations of a foster home for 10 years after the case is closed. If an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

(2) Adoption files: The agency, attorney, independent agent or PSD shall maintain records concerning adoptive families, including the ~~[foster care application records]~~ foster home parent file as described above at Paragraph (1) of Subsection A of 8.26.4.21 NMAC, as well as adoption case information including but not limited to the adoption decree, annual contact reports, and adoption assistance agreements.

(a) ~~[Approved cases: PSD transfers adoption records to archives one hundred (100) years after the date of birth of the youngest adopted child as set forth in 1.18.690.30 NMAC. Agencies, attorneys, and independent agents shall transfer adoption records to PSD upon closure of business.]~~ Finalized adoption cases: PSD and agencies shall retain finalized adoption records in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

(b) ~~[Denied cases: PSD, agencies, attorneys and independent agents shall retain cases for five (5) years after the case is closed.]~~ Disrupted or proposed adoptions not finalized: PSD and agencies shall retain cases for five years after the case is closed. In the event an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

B. Confidentiality: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA, the confidentiality provisions of the New Mexico Children's

Code, 32A-3B-22 and 32A-4-33, the specific authority related to certification of foster homes, Section 40-7-4 (D) and the Adoption Act, 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.

(1) Release in response to court order: PSD and agencies 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.

(2) Release to another agency that is considering a previously licensed family for licensure: An agency that has licensed a foster or adoptive family may release assessment information and the home study to any agency that is considering the foster or adoptive family for licensure, upon receipt of the signed notification by the foster family of its licensure history with previous agencies as described herein at Paragraph (9) of Subsection B of 8.26.4.9 NMAC.

C. Foster or adoptive parents files:

(1) Upon request foster or adoptive parents shall be allowed to review their own file with the exception of letters of reference and the identity of any abuse or neglect report source regarding the foster or adoptive parents. Copying the file is not permitted.

(2) PSD shall provide an unofficial copy of the home study to the foster or adoptive family upon written request to PSD.

(3) Foster or adoptive parents may purchase an official copy of their home study for reasonable fee to be determined by the PSD director.

[8.26.4.21 NMAC - Rp, 8.27.2.30 NMAC, 5/29/09; A, 8/15/11]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

This is an amendment to 8.26.5 NMAC, Sections 6, 7, 9, 10, 11, 12, 13, 14, 15, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 effective August 15, 2011.

8.26.5.6 OBJECTIVE: These standards supplement and are used in conjunction with the Child Placement Licensing Act. The standards:

A. authorize CYFD protective services division to license and monitor agencies that place children in adoptive homes or in foster care so that the safety, permanency, and well being interests of the child are served; and

B. authorize CYFD

protective services division to require the agency to protect the rights of children in foster or adoptive placement and to monitor agency compliance with the 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, as amended by the Inter-Ethnic Adoption Provisions of 1996, the Uniform Child Custody Jurisdiction and Safety Act, the Safe and Timely Interstate Placement of Foster Children Act, the Adam Walsh Act, [and] the Fostering Connections for Success and Increasing Adoptions Act, and the Child Abuse Prevention and Treatment Act Reauthorization of 2010. [8.26.5.6 NMAC - Rp, 8.27.6.6 NMAC, 5/29/09; A, 8/15/11]

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), or another state's central abuse or neglect registry to determine if there have been any previous referrals on the family to this state's or another state's 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 that 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.

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)

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.

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.

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.

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.

X. "Permanency plan" means a plan of intervention for the permanent placement of a child, as defined under the Adoption and Safe Families Act.

Y. "Placement" means the point in time when the child is placed in the foster or adoptive home by a legal custodian or guardian.

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.

AA. "Post-adoption" means any time following the entry of an adoption decree by the court.

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)~~] 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~~] 300 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)~~] 300 days after the termination of cohabitation.

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.

DD. "Service provider" means anyone, agency or individual, providing a service to an individual or client.

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.

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:] upon written application form a child placement agency, PSD may in the exercise of its sole discretion issue a variance that allows non-compliance with these Child Placement Agency Licensing Standards, 8.26.5 NMAC. Variances are issued in writing at PSD's sole discretion.~~

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; A, 8/15/11]

8.26.5.9 ELIGIBLE AGENCY:

A. The agency must be licensed to do business in the state of New Mexico.

B. PSD does not issue a license unless the applicant or agency maintains an office and sufficient staff in the state of New Mexico, as described herein at Subsection A of 8.26.5.21 NMAC. Both the state program director and [placement] supervisor must work in the New Mexico office. An agency must operate from a street address in New Mexico and have sufficient office space to protect and maintain client case records, client identifying information and agency operation. The agency must have established and posted hours of operation.

[8.26.5.9 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.10 APPLICATION: Any individual, group or organization requesting consideration for a license as a child placement agency shall submit a packet of information, as described in Subsections A-H below, to PSD. An applicant may be licensed as an adoption agency, a foster care agency, or both. As a condition of receiving a license, the applicant's proposed policies and procedures and proposed manner of operation shall be in writing and shall comply with the laws, regulations, and standards referenced herein. The application packet shall include:

A. Agency description and organization:

(1) the name or proposed name and location of the agency;

(2) profit or non-profit status;

(3) names and addresses of the members of the governing board;

(4) rules of the governing board and all sub-committees; and

(5) a signed statement from the governing board acknowledging

responsibility for placement and monitoring of children in homes approved by the agency for such placement and acknowledging responsibility for:

(a) monitoring risks that may expose the organization to liability; and

(b) monitoring risks that may reveal unsatisfactory service;

(6) the geographic area of operation.

B. Statement of purpose, including:

(1) a brief history of the existing organization;

(2) philosophy of the agency;

(3) the type of child placements the applicant agency proposed to provide;

(4) the type of services to be provided pertinent to the placement process;

(5) the type of services to be offered outside of the placement process;

(6) any applicable and current accreditations or affiliations.

C. Personnel:

(1) The application shall include a list of staff positions, which must include the following minimum personnel requirements:

(a) state program director, meeting the requirements as described herein at Paragraph (1) of Subsection A of 8.26.5.21 NMAC; the program director may also fulfill the role of placement supervisor and placement worker;

(b) [placement] supervisor, meeting the requirements as described herein at Paragraph (2) of Subsection A of 8.26.5.21 NMAC; and

(c) [~~placement worker~~] treatment coordinator, meeting the requirement as described herein at Paragraph (3) of Subsection A of 8.26.5.21 NMAC.

(2) The applicant agency shall include a copy of its personnel policy and procedures manual with its application, which shall include, but not be limited to, conflicts of interest, conflict resolution between staff and families, and gifts to staff. (See personnel policies and procedures requirements as described herein at 8.26.5.20 NMAC).

(3) The applicant agency shall in its application the following information regarding staff and contract providers:

(a) names, addresses, and telephone numbers of all staff and contract providers;

(b) resumes;

(c) documentation of the results of criminal records checks, and abuse and neglect checks, if required (see personnel policies and procedures requirements as described herein at Paragraph (6) of Subsection C of 8.26.5.20 NMAC; and

(d) documentation of employee and contractor reference checks.

D. Policies and procedures: A copy of adopted and

proposed policies and procedures addressing agency operations, client rights, client safety, and others as described herein at 8.26.5.18 NMAC.

E. Financial operations:

The application shall include documentation of financial operations, including:

(1) a statement of financial responsibility from a certified or registered public accountant which demonstrates that the applicant has access to sufficient funds to provide services for a minimum of six months;

(2) a letter from a certified or registered public accountant stating that a bookkeeping system is in place and a process of financial review or audit is completed at the end of each fiscal year;

(3) a complete list of fees for services; ~~and~~

(4) a projected six [(6)] month operating budget; and

(5) proof of professional liability insurance, acceptable to PSD.

F. Disclosures: Applicants shall disclose affiliations and parent holding companies, to include financial, religious, professional and political affiliations.

G. Other documents and information: The application shall include copies of any legal documents, such as constitution, by laws and articles of incorporation and any other relevant information requested by PSD.

H. Changes, additions or revisions: Contemplated changes, additions or revisions to the information contained in the original application shall be submitted to PSD for approval before implementation. PSD may request, in writing and by certified mail, additional information to support the application. The requested information shall be submitted within ~~[thirty (30)]~~ 30 calendar days of PSD's request. An agency's failure to respond to PSD's request for information within ~~[thirty (30)]~~ 30 calendar days shall be construed as voluntary withdrawal of an application.

[8.26.5.10 NMAC - Rp, 8.27.6.10 NMAC, 5/29/09; A, 8/15/11]

8.26.5.11 TYPES OF LICENSES:

A. Initial license: An initial license is granted to any agency when PSD verifies that the applicant is in substantial compliance with the licensing requirements. If the applicant is in substantial compliance but there are minor deficiencies, the applicant is directed to correct the minor deficiencies. An applicant's initial license shall be issued for a maximum of one [(+)] year.

B. Standard license: If the agency continues to meet all licensing requirements, PSD may elect to license the agency for a standard license. A standard license may be issued for one [(+)] year or

two [(2)] years. If all regulations have been met during the current audit, a license may be issued for up to two [(2)] years.

C. Six month license: A six [(6)] month license may be issued when PSD determines the agency has documented substantial deficiencies or chronic minor deficiencies, and:

(1) the agency submits a written corrective action plan as approved by PSD to correct the deficiencies; and

(2) the applicant can meet the licensing requirements within six [(6)] months from the date of issuance of the six [(6)] month license; PSD makes at least one site visit at least two [(2)] months prior to the expirations of the six [(6)] month license, or more frequent visits, to determine that the agency has taken sufficient steps to correct the deficiencies.

D. License extension: If an agency requests to be re-licensed, and holds a current standard license, and an audit is not conducted prior to the or on the date of expiration of the present license, the most recent license may remain in effect for a period of up to ~~[ninety (90)]~~ 90 calendar days beyond the current expiration date. The extension allows for completion of the audit and determination if a new license is issued, or, in the case of an agency closure, to allow for the timely transfer of families or children. Upon ~~[the]~~ written request of the agency, PSD issues a letter extending the license for the determined amount of time, not to exceed ~~[ninety (90)]~~ 90 days.

[8.26.5.11 NMAC - N., 5/29/09; A, 8/15/11]

8.26.5.12 APPROVAL OR DENIAL OF A LICENSE: A license is granted or denied based upon the application and upon PSD review, assessment and determination that the applicant is, or is not, in compliance with these standards and the standards outlined in the act.

A. Approval: PSD notifies the applicant, in writing, of approval of the application for a license. Notice is by registered mail sent to the address shown on the application within ~~[ninety (90)]~~ 90 calendar days after receipt of the completed application.

B. Denial: PSD notifies the applicant, in writing, of denial of the license. The applicant may be denied a license 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 any state agency responsible for regulation and licensing of child placement agencies or by a court of competent jurisdiction in any state where the agency has operated. Notice of denial is sent by registered mail to the address shown on the application within ~~[ninety (90)]~~ 90 calendar days after the receipt of

the completed application packet. A notice denying the license states the reason for the denial and informs the applicant of the appeal process. (See 8.26.5.14 NMAC, appeal rights, as described below). [8.26.5.12 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.13 LICENSE RENEWAL:

A. The agency shall request a renewal of its license, on a renewal form provided by PSD, by certified mail, no later than ~~[ninety (90)]~~ 90 calendar days before the expiration of the current license.

B. A license is renewed or terminated based on the agency's written request for renewal and PSD's review and assessment of agency operations. Failure to submit a renewal form at least ~~[ninety (90)]~~ 90 days prior to expiration of a license with the required documents attached, shall be interpreted as voluntary closure.

C. Upon request for license renewal, the agency shall submit to PSD its proof of professional liability, acceptable to PSD, financial review or audit, agency governing board minutes, and agency statistics for the current licensing period. If changes have occurred with respect to personnel or other operations, the agency shall submit documentation reflecting such changes with the renewal request. All required attachments, as indicated on the checklist on the PSD renewal form, shall be included with the request or the request is not considered valid and PSD shall advise the agency of such.

D. If an agency fails to file a renew request within ~~[ninety (90)]~~ 90 calendar days of expiration of the license, the license may, at PSD's sole discretion, automatically be terminated ~~[thirty (30)]~~ 30 days from the expiration date shown on the face of the existing license. The agency shall assist in the smooth transfer of the children and families to other agencies, so that there is no disruption in the care of the children.

E. Before renewing an agency's license, PSD shall determine that the agency is in compliance with all applicable requirements by conducting an on site visit which shall include interviews, case record reviews and visits to the facilities maintained by the agency. PSD is not responsible for locating documents when files are not kept organized and up to date.

F. PSD shall notify the agency in writing of its licensing decision before the expiration date of the current license. If CYFD does not renew the license prior to its expiration date, a license extension, at PSD's sole discretion, may be issued to the agency for a maximum of ~~[ninety (90)]~~ 90 calendar days. If PSD decides to not renew and agency's license, notice of denial is sent by registered mail to the address shown on the application prior to

the expiration date of the current license. The notice states the reasons for the denial and informs the applicant of the appeal process. (See 8.26.5.14 NMAC, appeal rights, as described below)
[8.26.5.13 NMAC - Rp, 8.27.6.19 NMAC, 5/29/09; A, 8/15/11]

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)~~] 20 days after receipt of notice thereof unless the time limitations are waived, or a child safety or health issue is present. An agency whose license has been denied, revoked, suspended, placed on probation or not renewed may 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; A, 8/15/11]

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) Governing Background Checks and Employment History Verification, 8.8.3 NMAC;

(~~3~~)(4) Adoption Act Regulations, 8.26.3 NMAC;

(~~4~~)(5) Certification

Requirements for Child and Adolescent Mental Health Services, 7.20.11 NMAC (for treatment foster care agencies);

(~~5~~)(6) Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C 1901 et seq.);

(~~6~~)(7) Adoption and Safe Families Act of 1997 (ASFA), P.L. 105-89;

(~~7~~)(8) Interstate Compact on the Placement of Children (ICPC);

(~~8~~)(9) Interstate Compact on Adoption and Medical Assistance (ICAMA);

(~~9~~)(10) Multi-Ethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Adoption Provisions of 1996;

(~~10~~)(11) Adam Walsh Child Protection and Safety Act of 2006;

(~~11~~)(12) Safe and Timely Interstate Placement of Foster Children Act of 2006; and

(~~12~~)(13) Fostering Connection for Success and Increasing Adoptions Act of 2008; and

(14) Child Abuse Prevention and Treatment Act Reauthorization of 2010.

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.~~] Compensation: An agency shall not provide compensation or solicit a provider of services for the purpose of the agency's benefit, not shall an agency receive compensation for referring providers to other agencies.

(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)~~] 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; A, 8/15/11]

8.26.5.18 AGENCY POLICIES AND PROCEDURES:

The agency shall develop and maintain written policies and procedures concerning the licensing of foster and adoptive families and shall provide PSD with a copy of these policies and procedures and with any changes to these policies and procedures within [~~ten (10)~~] 10 days of the change. Agency policies and procedures shall not conflict with any part of these licensing standards. Violations of this subsection may result in the suspension or revocation of the agency's license. Policies and procedures shall address, but are not limited to:

A. Protection of children: Agency policies and procedures shall acknowledge the agency's responsibility to protect the safety of children. Specifically, policies and procedures shall:

(1) require that agency staff (pursuant to the New Mexico Children's Code, 32A-4-1 et. seq. NMSA 1978) and all licensed families report all suspected incidents of abuse and neglect involving children in the agency's care and advise the child's legal guardian when such a report is made;

(2) address the safety of children who may be harmed while in the care and control of the agency or its providers and include a plan stating the course of action followed in the event a child is harmed, without regard to how the incident occurred, and [~~identifying~~] identifying the line of authority and the decision-making process to assist in the reporting and investigation of these matters;

(3) educate prospective and current foster or adoptive families on how to create a safe and supportive home environment for youth in foster care regardless of their sexual orientation, gender identity or gender expression.

B. Confidentiality: Agency policies and procedures shall acknowledge the agency's responsibility to maintain the confidentiality of client case records and client identifying information including all foster and adoptive families, and applicant files.

C. Certification and licensing of families: Agency policies and procedures shall include criteria for initial certification and licensing and re-certification and re-licensing of families.

(1) Agencies are required to provide procedures for administrative reviews for families who are not licensed initially. This is an informal process completed by the agency director or designee, which may include an informal conference or a record review. The administrative review does not create any substantive rights for the family. (See Licensing Requirements for Foster and Adoptive Homes, Subsection A of 8.26.4.19 NMAC)

(2) Agencies are required to have policies and procedures for providing administrative appeals for families whose license has been ~~denied;~~ revoked, suspended, ~~place~~ placed on probation or not renewed. (See Licensing Requirements for Foster and Adoptive Homes, Subsection B, C and D of 8.26.4.19 NMAC)

D. Acknowledgement of rights and notification forms:

(1) Agency ~~[policy and procedure]~~ policies and procedures shall require that foster or adoptive parents sign an acknowledgement of rights form that explains the foster or adoptive parent's rights. The agency maintains the original signed acknowledgement of rights in the foster or adoptive parent file.

(2) Agency ~~[policy and procedure]~~ policies and procedures shall also require that the foster or adoptive parents or applicants disclose their history of application to and licensing by any other agency ~~[and sign a PSD approved notification form that will serve the purpose of notifying any previous agency of the foster or adoptive parent's application to the current agency:]~~ in this or any other state. The foster or adoptive family or applicant shall sign a PSD approved notification form that will serve the purpose of notifying any previous agency of the foster or adoptive parent or applicant application to a new agency. (See Licensing Requirements for Foster and Adoptive Homes, Paragraph (9) of Subsection B of 8.26.4.9 NMAC) The previous agency may release assessment information and the home study to the ~~[current]~~ new agency regarding ~~[such]~~ the foster or adoptive family or applicant upon receipt of signed notification that the ~~[family]~~ foster or adoptive parent or applicant is being considered for licensure or approval by the ~~[current]~~ new agency.

E. Foster parent rights: Agency policies and procedures shall describe the rights of foster parents and shall require that foster and adoptive parents sign an acknowledgement of rights form as described herein at Paragraph (1) of Subsection D of 8.26.5.18 NMAC.

F. Foster parent roles and responsibilities: Agency policies and procedures shall describe foster parent roles and responsibilities which may include, but is not limited to:

(1) preserving family connections;

(2) refraining from disparaging the foster child's parents, relative or the child's cultural heritage or religious beliefs;

(3) refraining from corporal punishment; and

(4) respecting religious or cultural beliefs of the child's biological family.

[E.]G. Training: Agency policies and procedures shall include a statement of training requirements for staff and foster and adoptive parents, and agency procedures shall outline the method of tracking that the training is complete. PSD may, at its own discretion, require the agency to provide specific training for their licensed families, and will notify agencies when that training is available.

[F.]H. Detailed services: Agency policies and procedures shall include a description of agency services.

[G.]I. Fee schedule: Agency policies and procedures shall set forth fees charged for adoption or treatment foster care related services, including, but not limited to the purchase of approved home studies.

[H.]J. [Review process:] ~~Agency policies and procedures shall include the process by which grievances and incident reports are reviewed for correction.]~~ **Grievances:** Agency policies and procedures shall include that process by which agencies review and make decisions on foster or adoptive parent grievances.

K. Incident reports: Agency policies and procedures shall include the process which the agency reviews and acts upon incidents reported in foster or adoptive family homes. Incidents and subsequent incident reports may include, but are not limited to:

(1) policy and procedure violations;

(2) abuse or neglect referrals;

(3) death or serious injury to a foster child;

(4) safety issues concerning a foster child;

(5) foster children who have run away; or

(6) any of the incidents currently codified at Subsections BU and DT of 7.20.11.7 NMAC, Certification Requirements for Child and Adolescent Mental Health Services.

[8.26.5.18 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.21 PERSONNEL QUALIFICATIONS AND REQUIREMENTS:

Treatment foster care agencies shall comply with Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC. In addition, child placement agencies must ensure compliance with the following requirements.

A. Minimum staff:

The staff of an agency shall include, at

a minimum, a program director and a [placement] supervisor, and may include [placement workers] treatment coordinators. The program director may also fulfill the role of [placement] supervisor and [placement worker] treatment coordinator, provided the person meets the minimum qualifications for the higher position.

(1) State program director: The program director and agency shall work in its New Mexico office and shall be able to demonstrate through documentation, knowledge of child welfare services and the circumstances which children and families experience in the substitute care or adoptive process. The minimum acceptable requirements of the program director of an agency are:

(a) a graduate degree from an accredited college or university program in one of the following fields: social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling or another human services related field; and

(b) a minimum of two years experience providing social services in a licensed child placement agency or a state child placement agency with at least one [(+) year of supervisory experience.

(2) [Placement supervisor] Supervisor: The [placement] supervisor is required to possess a [bachelor's] graduate degree from an accredited college or university program in the following fields: social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling or another human-services related field. A placement supervisor has at least one [(+) year of experience providing social services in a licensed child placement agency or a state child welfare agency. The [placement] supervisor works in New Mexico.

(3) [Placement worker] Treatment coordinator: The [placement worker] treatment coordinator is required to possess a bachelor's degree from an accredited college or university program in the following fields: social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling or another human services related field. The placement worker works in New Mexico.

B. Employment history: An agency shall obtain a relevant employment history on each potential employee prior to employment and verify requisite experience or document attempts to accomplish such in the personnel file.

C. Not retroactive: The educational and experience requirements contained herein do not apply to individuals continuously employed by an agency on or before the effective date of these regulations.

D. References: At least three [(3)] professional and character references shall be obtained by an agency

for each potential professional employee prior to his or her employment. One of these references shall be from the previous employer or a professional colleague who has direct knowledge of the qualifications of the potential employee. Each letter of reference shall be followed up by a phone call by the agency. Documentation of references, with date and type of contact, including all telephone or in person contacts, shall be included in the employee's personnel file.

E. Background checks:

Abuse and neglect checks and criminal records checks are required for direct service staff as a condition of employment. This includes agency personnel who work in direct, unsupervised contact with clients or have physical proximity to clients such that physical contact could occur, as defined herein at Subsections H and M of 8.26.5.7 NMAC.

(1) If a criminal records check is not required for any staff member, the reason it is not required must be documented in the employee's record.

(2) Direct service staff shall report all arrests or abuse and neglect referrals to the agency within ~~[twenty-four (24)]~~ 24 hours of the alleged offense or referral to PSD. Failure to report could result in termination or suspension. The agency shall investigate any reported or discovered arrests and referrals and take appropriate action to protect the safety of its clients.

(3) Any corrective actions in response to a referral or arrest will depend on the outcome of such referral or arrest and may include a written reprimand, a corrective action plan, and restriction of unsupervised contact with clients, suspension or termination, depending on the nature of the offense and whether or not children were involved. The agency shall document any corrective action in the employee's employment file.

F. Personnel policy: A copy of the agency's personnel policy shall be ~~[give]~~ given to each employee at the time of employment. Documentation of receipt of the policy shall be maintained in the personnel file.

G. Staff training: An agency shall document a minimum of ~~[fifteen (15)]~~ 15 hours of training relevant to the position, per year, for each agency's full-time professional employees, and ~~[ten (10)]~~ 10 hours of training relevant to the position, per year, for each of the agency's part-time (20 hours or less) professional employees. All applicable licensing requirements apply which may lead to more hours than the requirements of PSD, but shall not be less. PSD may at its discretion, require the agency to provide topic specific training for agency personnel.

[8.26.5.21 NMAC - Rp, 8.27.6.17 NMAC, 5/29/09; A, 8/15/11]

8.26.5.22 PERSONNEL, CONTRACTOR AND VOLUNTEER FILES:

A. Employee personnel

file: The agency shall maintain a personnel file for all employees of the agency which shall be available to PSD for inspection. Each file shall include, at a minimum:

(1) application: the employee's employment application showing qualifications and experience;

(2) reference: the agency shall obtain at least three professional and character references for each potential employee prior to his or her employment;

~~[(2)](3)~~ academic transcripts: the official academic transcripts;

~~[(3)](4)~~ disciplinary actions: documentation of any disciplinary action taken with respect to any employee;

~~[(4)](5)~~ evaluations: any evaluations of work performance;

~~[(5)](6)~~ background check results: the results of the abuse and neglect and criminal records check, if required; if a background check is not required, the file shall include written documentation as to why it is not required;

~~[(6)](7)~~ training: documentation of training received, content and hours;

~~[(7)](8)~~ license: a copy of an employee's professional license when applicable;

~~[(8)](9)~~ abuse and neglect reporting: a signed statement of understanding by the employee of the requirements to report suspected abuse and neglect to PSD;

~~[(9)](10)~~ child placement agency licensing standards: a signed statement by the employee acknowledging the receipt these regulations; and

~~[(10)](11)~~ confidentiality statement: any individual who is employed by an agency shall sign a statement acknowledging the confidentiality rights of the children and families that are or may become clients of the agency, specifically that case records and client identifying information shall not be publically released.

B. Volunteer and

contractor file: The agency shall maintain a separate file on each individual or entity not employed by the agency, conducting business on the agency's behalf, which shall include, but is not limited to:

(1) contract: the contract, which outlines the specific requirements, qualifications and experience, and limitations of the contract;

(2) reference: the agency shall obtain at least three professional and character references for each potential contractor prior to the commencement of the contract;

~~[(2)](3)~~ academic transcripts: the

official academic transcripts of individuals working under the contract; ~~[if required under the contract;]~~

~~[(3)](4)~~ disciplinary actions: documentation of any disciplinary action taken with respect to the volunteer or contracted agency or individual;

~~[(4)](5)~~ evaluations: any evaluation of work performance;

~~[(5)](6)~~ background check results: the results of the abuse and neglect and criminal records check, if required; if a background check is not required, the file shall include a statement as to why it is not required;

~~[(6)](7)~~ license: a copy of the current professional license; ~~[if required under contract;]~~

~~[(7)](8)~~ abuse and neglect reporting: a signed statement of understanding by the contractor or volunteer of the requirements to report suspected abuse and neglect to PSD;

~~[(8)](9)~~ child placement agency licensing standards: a signed statement by the contractor or volunteer acknowledging the receipt these regulations; and

~~[(9)](10)~~ confidentiality statement: any individual who volunteers for or is contracted by an agency shall sign a statement acknowledging the confidentiality rights of the children and families that are or may become clients of the agency, specifically that case records and client identifying information shall not be publically released.

[8.26.5.22 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.23 AGENCY SERVICES:

A. Adoption services:

The agency shall maintain a detailed description of the agency's adoption services and procedures applicable to those services. The description shall include, but is not limited to, adoptive home assessments, relinquishment procedures, procedure to assure best interest adoption placement, provision for medical services for the birth mother and the child, post-relinquishment medical services for the child until adoptive placement occurs, services for adoption applicants and biological parents, placement and post-placement services, management of adoption disruptions and dissolutions, finalization procedures and post decree adoption support services. All agencies shall follow the requirements for the assessment process for foster or adoptive homes licenses set forth in the Adoption Act Regulations, 8.26.3.18 NMAC, and Licensing Requirements for Foster and Adoptive Homes, 8.26.4.12 NMAC.

B. Foster care services:

The agency shall maintain a detailed description of the services provided to the children and families who are served by the agency, as well as the agency's foster care

services. The description shall include, but is not limited to, recruitment, foster home assessments, training of foster parents, the placement process, documentation of contacts between child and biological family, the interaction of the agency with the child's family of origin and with the foster home, documentation of efforts made to reunite the child with the family, when appropriate, and the permanent plan. All agencies shall follow the requirements for home studies, including background checks, or pre-placement studies set forth in the Adoption Act Regulations, 8.26.3.18 NMAC and the Licensing Requirements for Foster and Adoptive Homes, 8.26.4.14 NMAC. Therapeutic foster homes must meet the requirements listed in Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC, in order to receive Medicaid reimbursement.

(1) All services to be rendered shall comply with the court order, if the child is not in the custody of the parent.

(2) For children in department custody, agency case planning shall be reflective of the case plan developed by PSD and shall never be in conflict with the PSD case plan or current court orders. The treatment foster care coordinator shall be invited to staffing meetings with department staff to determine that the case plans are consistent.

C. Relinquishment of parental rights:

(1) If an individual contacts an agency to relinquish his or her parental rights, pursuant to the Adoption Act, 32A-5-17(4) and (5) and 32A-5-19 (E) NMSA 1978, the agency shall make diligent efforts to locate, obtain and document consent from the acknowledged or presumed father defined herein at Subsections B and D of 8.26.5.7 NMAC. Consent from the alleged father, defined herein at Subsection AA of 8.26.5.7 NMAC, shall not be required. Diligent efforts shall include attempts to locate any court records pertaining to a divorce, separation, paternity or custody action, a search of the putative father registry and a search of PSD's record and all other efforts that may be reasonable under the circumstances. The agency shall also obtain and maintain documentation establishing the parental rights of the presenting parent. A signed release of information allowing the agency to conduct searches shall be obtained to allow the agency to determine that an outstanding custody order which prohibits the parent from acting independently is not in effect. Such a search shall be diligent and encompassing of all jurisdictions in which the child has resided since birth. The agency shall not take any action to place the child for adoption until such time as the agency has determined that parental rights have

been relinquished, terminated, or that legal proceedings relating to custody of the child are not pending. This does not preclude the agency from placing the child in a legal risk adoption home. Should there be concern for the welfare of the child due to the parents' inability to care for and protect the child, the agency shall notify CYFD's statewide central intake (SCI).

(2) An agency shall not use coercion or deception to obtain a relinquishment of parental rights from a parent. A relinquishment is freely and voluntarily given by the biological parent.

(3) A relinquishment of parental rights shall be taken before a court of competent jurisdiction pursuant to the Adoption Act, 32A-5-17 through 32A-5-24 NMSA 1978.

(4) An agency's payment to, or on behalf of, a relinquishing parent shall be limited to the actual costs associated with the adoption and conforms to all provisions of New Mexico law. If any agency becomes aware of an illegal payment by any agency or individual, the agency shall notify the court presiding over the adoption proceedings or PSD.

D. Placement: Placement does not occur until after a comprehensive assessment of how the prospective foster family can meet the child's needs and preferences, and a documented determination by the agency that the prospective placement is in the best interest of the child.

E. Change in placement: When a change in a child's placement is contemplated, the agency shall work with the legal guardian or parents to determine if the placement change is in the best interests of the child.

(1) Except in cases of an emergency, an agency shall not make a change in placement of the child without the concurrence of the legal guardian, and the guardian ad litem or youth attorney, if applicable. When a placement change is agreed upon, including a return to the child's home for a trial home visit, the agency shall arrange for:

(a) the transfer of all of the child's belongings, including clothing, personal belongings, the child's medical and educational records, and the child's life book;

(b) notifying the PSD case worker, the child's CASA, the guardian ad litem or youth attorney, if applicable, of the placement change at least [~~ten~~(10)] 10 days prior to the change of placement if the child in question is in state custody; and

(c) documentation of the change in placement in the child's agency record.

(2) The agency shall notify the child of the placement change. The legal guardian may choose to be a part of the disclosure to the child. The placement worker

shall be responsible to provide medical, education, and psychological information to any subsequent placement provider.

(3) An emergency change in placement may occur only when the caretaker requests the immediate removal of the child or for the safety of the child. If the emergency change is due to a mental health hold, it must be in compliance with the provisions of the Mental Health Placement Act. The agency shall notify the legal guardian of the change in placement, unless circumstances preclude such and are documented in the child's record. For children in state custody, if the removal occurs after regular working hours, the agency notifies statewide central intake (SCI).

F. PSD registration: In accordance with national child abuse and neglect data system (NCANDS) requirements for the reporting and tracking of abuse and neglect in foster homes, all foster homes shall be registered with PSD.

(1) The agency shall register a family with PSD upon the licensing of the home and prior to the agency placing a child in the home.

(2) The agency shall notify PSD within five [~~(5)~~] working days if a family's license is revoked or not renewed. [8.26.5.23 NMAC - Rp, 8.27.6.13 NMAC, 5/29/09; A, 8/15/11]

8.26.5.24 CONTINUITY OF SERVICE: An agency shall provide continuity of services for children in their care in the event that a family transfers from one agency to another.

A. Transfers:

(1) **Foster family:** The transfer of a foster family from one agency to another when a child is placed in the home is discouraged, unless all members of the child's treatment team and the agencies involved agree that the transfer is in the best interest of the child. If the transfer is in the best interest of the child, the sending agency and receiving agency shall ensure that services being received by the child follow that child to the new agency in order to ensure consistency in the course of that child's treatment. If the home is a therapeutic foster home, both agencies must comply with the Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC. Both agencies shall provide written documentation, to PSD in the case of children in custody of PSD, or to the legal guardian when the child is not in custody of PSD that the transfer is in the best interest of the children currently in the home. A reasonable fee may be charged by the sending agency to the receiving agency for:

(a) document copying;

(b) time and effort spent

conducting the home study; and

(c) training hours provided to parents.

(2) Adoptive family: Transfer of an adoptive family from one agency to another shall not occur after the agency had indentified the family and agreed to the placement. In permissible transfers, the family's request to transfer from one agency to another shall be made in writing to the agency that initially certified the family. When the adoptive parents have paid the applicable fees and after written notice of the transfer has been filed with the previous agency, the previous agency shall send documentation leading to certification to the current agency. A reasonable fee may be charged by the sending agency to the receiving agency for:

(a) document copying;

(b) time and effort spent conducting the home study; and

(c) training hours provided to parents.

(3) Fees: Foster and adoptive parents are not responsible for these fees. Agencies may file a complaint with PSD if they believe charges to be unreasonable.

B. New license: No foster care home or adoptive home may be licensed for placement by more than one agency or PSD.

(1) If a foster home license has been revoked by an agency due to a substantiated abuse or neglect investigation they may not be licensed by another agency unless the applicant can demonstrate that the dynamics that resulted in the abuse or neglect have been resolved and that no safety issues exist. In all such cases, the agency reviewing the application shall consult with PSD prior to approving the license.

(2) If a foster home license has been revoked by an agency due to any of the federally mandated automatic disqualifiers listed in Licensing Requirement for Foster and Adoptive Homes, Subsection D of 8.26.4.10 NMAC, then that family may not be licensed by another agency. Applicants who have a conviction for crimes other than those included in Subsection D of 8.26.4.10 NMAC are not disqualified from licensure; however this information shall be used to determine suitability for licensure. In all such cases, the agency reviewing the application shall consult with PSD prior to approving the license.

(3) ~~If a family transfers from one agency to another, the current agency shall request assessment information and the home study from the previous agency by presenting the to the previous agency the family's signed PSD approved notification of the family's history with any previous agency as described herein at Paragraph (2) of Subsection D of 8.26.5.18 NMAC. The license issued by the new agency is~~

~~considered a new license and shall conform to these standards. It is the responsibility of the current agency to review the information provided by the previous agency. This review shall be documented by the current agency] When a family transfers from one agency to another agency, the new agency shall request the family to sign a PSD approved notification form that will serve the purpose of notifying any previous agencies of the family's application to a new agency. Previous agencies may release assessment information and home studies to the new agency regarding the family. Licenses issued by the new agency shall be considered new licenses and shall conform to these standards. It is the responsibility of the new agency to review the information provided by the previous agencies. This review shall be documented by the new agency. (See herein at Paragraph (2) of Subsection D of 8.26.5.18 NMAC and in Licensing Requirements for Foster and Adoptive Homes, Paragraph (9) of Subsection B of 8.26.4.9 NMAC)~~

(4) All foster care and adoption agencies shall follow the requirements for background checks, home studies or pre-placement studies as set forth in the Adoption Act Regulations, 8.26.3.18 NMAC, and the requirements for background checks and assessments as set forth in Licensing Requirements for Foster and Adoptive Homes, [Subsections] Sections 10, 11, and 12 of 8.26.4 NMAC.

C. Respite care: Any agency seeking to use a family licensed by another agency for respite care must receive advance approval from the child's legal guardian and the agency licensing the respite family.

[8.26.5.24 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.25 RECORDS:

A. Types of records: Separate records shall be kept for foster parents, adoptive parents, and the child. The agency shall also keep separate its administrative records as described herein at Subsection E of 8.26.5.25 NMAC. The child's record includes information regarding the family of origin. Case records shall be continuously updated and easily accessible to the agency staff and PSD.

B. Foster parent records: The agency shall maintain records concerning the evaluation of a foster home which may include, but are not limited to:

(1) the application documents as set forth in Licensing Requirements for Foster and Adoptive Homes, 8.26.4.9 NMAC;

(2) the original home study and all subsequent updates or addenda and are filed in sequence; in addition, the foster parent record shall contain a separate documentation section which lists each placement in the home including but not limited to the

name of the child, dates of placement, and the reason for a child's removal from the biological home; if a disruption occurs, the reason for the disruption of placement shall be documented;

(3) criminal records checks results of the foster parents and any adults living in the home, as well as abuse and neglect checks; the agency shall arrange for abuse and neglect checks, criminal records checks, and renewals of these checks as set forth in Licensing Requirements for Foster and Adoptive Homes, [Subsections] Sections 10 and 11 of 8.26.4 NMAC.

(4) medical exam records and signed releases of information;

(5) the home safety checklist as set forth in Licensing Requirements for Foster and Adoptive Home 8.26.4.13, NMAC; the home safety checklist shall be updated annually at recertification; CYFD will provide the form to all applicants; the agency shall provide information regarding each listed category;

(6) the annual clean well water certification if the home uses well water as a water source;

(7) a copy of the foster home license; and

(8) any and all correspondence between the agency and the foster parents.

C. Adoptive parent record: The agency shall maintain records concerning the evaluation of an adoptive home which may include, but are not limited to:

(1) the application documents as set forth in Licensing Requirements for Foster and Adoptive Homes, 8.26.4.9 NMAC;

(2) the original home study or pre-placement study and all subsequent updates or addenda and are filed in sequence; in addition, the adoptive parent record shall contain a separate documentation section which lists each placement in the home including but not limited to the name of the child, dates of placement, and the reason for a child's removal from the biological home; if a disruption occurs, the reason for the disruption of placement shall be documented; this will be used during the best interest placement process; the agency shall maintain in each file the annual clean well water certification if the home uses well water as a water source;

(3) criminal records checks results of the adoptive parents and any adults living in the home, as well as abuse and neglect checks; the agency shall arrange for abuse and neglect checks, criminal records checks, and renewals of these checks as set forth in Licensing Requirements for Foster and Adoptive Homes, [Subsections] Sections 10 and 11 of 8.26.4.10 NMAC;

(4) medical exam records and signed releases of information; the agency

shall maintain in each file the home safety checklist; the home safety checklist shall be updated annually at recertification; this form may be requested from CYFD, and shall, at a minimum, address each safety category as developed by CYFD;

(5) the home safety checklist as set forth in Licensing Requirements for Foster and Adoptive Home 8.26.4.13, NMAC. The home safety checklist shall be updated annually at recertification; PSD will provide the form to all applicants; the agency shall provide information regarding each listed category;

(6) the annual clean well water certification if the home uses well water as a water source;

(7) a copy of the foster home license, if applicable;

(8) any and all correspondence between the agency and the adoptive parents; and

(9) the adoption decree and all adoption assistance agreements.

D. Child's record: These requirements apply to all children in the care of a licensed child placement agency and are not restricted to children in the custody of PSD. The record of the adoptive or foster child shall contain:

(1) placement history section: the placement history section shall contain a chronological summary of the child's placements, including the name, and address of the foster home of all the child's placements, the dates of each placement and the child's adjustment to each placement, including progress, problems and their resolution, and reasons for removal, disruption, or replacement; the placement history shall record all formal and informal placements since birth;

(a) for children placed in foster homes, this section shall record in detail the reason a child is moved from one home to another, i.e., enumerating the child's behavior or family problems;

(b) for children placed in adoptive homes, this section shall contain the name and address of the adoptive parents and a description of the child's adjustment in the home up to the time of filing the post-placement report;

(c) for foster and adoptive children, this section shall include all documented efforts to secure the placement information, such as letters and telephone calls to the worker or parents;

(2) progress notes for foster children: progress notes for foster children shall reflect the child's activities, behaviors, school issues, medical issues and emotional state, and the foster parent's observations of the child; progress notes shall be developed, at a minimum, on a weekly basis;

(3) education records: the agency shall maintain documentation of the child's

educations status, needs, and history; the documentation shall include information provided by the school to the agency and is updated, at a minimum, each semester;

(4) medical records: the agency shall maintain documentation of the child's medical needs, medications, and history;

(5) best interest placement: the agency shall document in the child's file the process used to determine that the child was placed appropriately, including the care givers' abilities to address the child's needs;

(6) full disclosure documentation: the agency shall document in the child's file all information that the agency has disclosed to the foster or adoptive parent and the child's PSD worker as described herein at Subsection A of 8.26.5.17 NMAC;

(7) permanency plan: the child's permanency plan shall be clearly documented as set forth in Permanency Planning, 8.10.8.8 NMAC; the permanency plan for children in the custody of PSD is designated by the court; it is the agency's responsibility to know the plan and document accordingly; for children not in PSD custody, the agency shall staff and designate the plan;

(8) monthly treatment plan report: the child's record shall contain a monthly treatment plan report of services provided by the agency;

(a) the report shall summarize the services provided, such as home and office visits, treatment needs, issues, prognosis, relationship with foster parents, current medical and educational information, and the child's progress toward discharge; if the child is dually diagnosed, the plan to address both diagnoses and the permanency plan shall be included; the reports shall be subdivided into the identified sections by service;

(b) for children in PSD custody, the report shall be provided to the PSD worker and shall include dates and locations of all professional staff visits with the child;

(c) for children not in PSD custody, the report shall be provided to the child's legal guardian.

E. Administrative records: Administrative records include but are not limited to:

(1) personnel records or files as described herein at 8.26.5.21 NMAC;

(2) agency policy and procedure as described herein at 8.26.5.18 NMAC;

(3) personnel policy and procedure as described herein at 8.26.5.20 NMAC;

(4) fiscal records as described herein at 8.26.5.19 NMAC; and

(5) a copy of the agency's license. [8.26.5.25 NMAC - Rp, 8.27.6.16 NMAC, 5/29/09; A, 8/15/11]

8.26.5.26 MAINTENANCE OF RECORDS:

A. Foster parent records:

[Foster parent care records shall be retained by the agency in locked files for at least ten (10) years from the date of case closure. In the event a foster care agency is closed or goes out of business, the agency shall forward the records of clients transferring to another agency, to the foster care agency with whom the child is placed.] The foster care agency shall retain foster parent records for 10 years from the date of case closure. In the event a foster care agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

B. Adoptive parent records:

(1) [Approved cases: Adoption records shall be retained by the agency in locked files for one hundred (100) years from the date of case closure. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall forward records to PSD for permanent storage.] Finalized adoption cases: The agency shall retain adoptive parent records in finalized cases in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

(2) [Denied cases: Agencies shall retain cases for five (5) years after the case is closed.] Disrupted or proposed adoptions not finalized: The agency shall retain adoptive parent records for disrupted or proposed adoptions not finalized for five years after the case is closed. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

C. The child's record:

(1) [If the child is adopted the child's record shall be retained by the agency as described above herein at Paragraph (1) of Subsection B of 8.26.5.26 NMAC.] If the child is adopted: The agency shall retain the child's record in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

(2) [If the child remains in foster care the child's record shall be retained by the agency as described above herein at Subsection A of 8.26.5.25 NMAC.] If the child remains in foster care: The agency shall retain the child's record for 10 years from the date of case closure. In the event a foster care agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

D. Administrative records: An agency shall retain its administrative records for a minimum of seven [(7)]years from the date the records

were created unless an applicable law requires retention for a longer period of time. ~~[Upon expiration or revocation of the agency's license or if the agency closes, it shall forward its administrative records to CYFD.] If the agency closes, including when an agency's license has expired or the agency goes out of business, or where the agency's license has been revoked, the agency shall retain its administrative records for five years after the agency has closed or goes out of business. The agency shall comply with 8.26.5.30 NMAC herein.~~

E. Confidentiality: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA, the confidentiality provisions of the New Mexico Children's Code, 32A-3B-22 and 32A-4-33, the specific authority related to certification of foster homes, Section 40-7-4 (D) and the Adoption Act, 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.

(1) Release in response to court order: PSD and agencies 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.

(2) Release to another agency that is considering a previously licensed family for licensure: An agency that has licensed a foster or adoptive family may release assessment information and the home study to any agency that is considering the foster or adoptive family for licensure, upon receipt of the signed notification by the foster family of its licensure history with previous agencies as set forth in Licensing Requirements for Foster and Adoptive Homes, Paragraph (9) of Subsection B of 8.26.4.9 NMAC. [8.26.5.26 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.27 REPORTS:

A. Semi-annual reports: An agency shall submit to PSD a semi-annual statistical report of the services provided by the agency.

B. Report format: Semi-annual reports shall be prepared on forms provided by PSD and include all the information required therein, including, but not limited to:

- (1) foster home statistics:
 - (a) number of applications received;
 - (b) number and types of foster home applicants licensed by type;
 - (c) number of applicants denied;
 - (d) number of licenses revoked;
 - (e) number of applications pending at the end of the reporting period;
 - (f) number of applications withdrawn;

- (g) names of all family members of all homes transferring to other agencies and the receiving agency and the reason for the transfer, should foster children reside in the home, the report shall also document how continuity of care was maintained;

- (h) number of foster homes operating under the agency's supervision at the end of the reporting period;

- (i) all complaints, incidents, and abuse and neglect reports with complaint's identifying information made regarding specific homes or the agency, and information regarding resolution of such; and

- (j) any other specific data requested by PSD;

(2) foster children statistics:

- (a) number of children placed in foster care during the reporting period;

- (b) number of foster children discharged from placement during the reporting period;

- (c) number of foster children remaining in foster care placement at the end of the reporting period;

- (d) number of children removed from one foster home and placed in a different foster home licensed by the agency;

- (e) number of children removed from one foster home and placed with another agency's foster home;

- (f) number of children removed ~~from~~ from one foster home and placed in a hospital, RTC, group home, or shelter during the reporting period;

- (g) identity (first name and last initial) and date of placement of those children who have been in foster care for more than six ~~[(6)]~~ months;

- (h) legal custodian of those who have been in foster care for more than six ~~[(6)]~~ months; and

- (i) any other child-specific data requested by PSD;

(3) adoptive home statistics:

- (a) number of applications received from prospective adoptive parents during the reporting period;

- (b) number of applications denied;
- (c) number of applications withdrawn;

- (d) number of adoptive studies pending;

- (e) number of agency adoptive studies approved and waiting;

- (f) number of agency studies not approved;

- (g) number of agency adoptive studies withdrawn;

- (h) all complaints, with complaint's identifying information, made regarding the agency;

- (i) number of pre-placement training held;

- (j) number of families receiving post placement services;

- (k) number of families receiving

post-decree services;

- (l) names of homes transferring to other agencies and the reasons given; and

- (m) any other specific data requested by PSD;

(4) adoptive children statistics:

- (a) number of children freed for adoption;

- (b) number of children physically placed with adoptive parents;

- (c) number of adoption disruptions;

- (d) number of adoptions finalized; and

- (e) any other child-specific data requested by PSD;

- (5) a list of clients and their status and a separate list of foster parents or adoptive parents who maintain a license of certificate for adoption.

C. Confidentiality of reports: Semi-annual reports are not confidential, except that client identifying information and criminal records checks and abuse and neglect checks information, shall not be ~~[publically released]~~ released to the public except as required by a court order [8.26.5.27 NMAC - Rp, 8.27.6.16 NMAC, 5/29/09; A, 8/15/11]

8.26.5.28 EMERGENCY RESPONSE PLAN: As required by the federal Child and Family Services Improvement Act of 2006 and included in CYFD's federal child and family services plan, each agency shall develop and maintain a written emergency response plan. The plan shall be developed within three ~~[(3)]~~ months of the promulgation of these regulations, or within three ~~[(3)]~~ months of initial licensure.

A. Essential functions: The agency's plan must assure the agency, in the ~~[even]~~ event of a wide-scale emergency, is capable of performing the following essential functions:

- (1) locating and ensuring the safety of children placed with families licensed by the agency and of those families;

- (2) locating and ensuring the safety of agency staff;

- (3) cooperating with, sharing information, and assisting PSD in providing emergency response as requested; and

- (4) ensuring continuity of operations, including maintaining records, continuing payments to providers, communicating with staff and foster care providers, and documenting costs of response efforts.

B. Content of plan: The details of each agency's emergency response plan shall be developed by the agency based on its specific characteristics and needs, including the size of staff, the number of families and children served, the geographic location, office facilities and resources, and other factors. Although the details of each plan may vary, the plan shall include:

(1) a safety plan for the office, including evacuation of staff and identification of an alternate location if the office is unavailable;

(2) development of a staff registry, including emergency contact numbers and the identification of and contact information for at least two [(2)] locations (including one out-of-town location) where staff would go in the event a community evacuation is necessary;

(3) a call-back process to notify staff to report for work after hours;

(4) identification of a lead person (incident commander) for emergency response and a liaison to coordinate with other response agencies in the community, including the [PS] PSD county office;

(5) development of a foster and adoptive parent registry, including emergency contact numbers and the identification of and contact information for at least two [(2)] locations (including one out-of-town location) where the foster or adoptive family would go in the event a community evacuation is necessary;

(6) a call-in process for foster and adoptive families to report their location and condition and request assistance if necessary;

(7) assistance to foster and adoptive families in developing their own family emergency plans;

(8) a continuity of operations plan addressing how records will be safeguarded, communication will be maintained, activities and costs will be documented, payments will be made, and other business functions continued during and immediately after the emergency;

(9) a plan to assist families and children to recover from the emergency, including reuniting families and children, providing psychosocial support, linking with resources, and other services as needed; and

(10) a recovery plan to reestablish business as usual.

C. Coordination of plans:

The agency's plan shall be coordinated with the local county emergency operations plan. Assistance in the development of the plan may be available from the county government's emergency management personnel; if not it may be requested from PSD staff.

D. Training and drills:

All agency staff shall be trained in the emergency response plan and shall participate in regular drills and exercises. Staff shall also participate in county-wide, inter-agency drills and exercises as requested by local emergency management personnel.

[8.26.5.28 NMAC - N, 5/29/09; A, 8/15/11]

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] of alleged policy violations: PSD investigates complaints [and] of alleged violations of agency policy or procedures or CYFD licensing regulations. Allegations of abuse and neglect regarding

agency staff are considered alleged policy violations. Such complaints and alleged violations shall be submitted in writing to the foster care and adoption bureau.

(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)~~] 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, 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 [again] 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)] 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)] 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; A, 8/15/11]

8.26.5.30 VOLUNTARY AGENCY CLOSURE: [~~When a licensee closes its agency, the licensee shall notify PSD in writing at least ninety (90) calendar days prior to the agency beginning to move staff, families or children to another agency. The licensee shall provide PSD a written plan summarizing the preparation and arrangements for the care, custody and control of any children being served and the financial plan to ensure timely payments to families. The licensee shall make arrangements for the transfer of records to PSD.~~]

A. When an agency voluntarily closes, the agency shall notify PSD in writing at least 90 calendar days prior to the agency beginning to move staff, families or children to another agency. The licensee shall provide PSD a written plan summarizing the preparation and arrangements for the care, custody and control of any children being served and the financial plan to ensure timely payments to families.

B. Retention of records in agency closures:

(1) In all closures of treatment foster care agencies, including involuntary closures, the agency shall retain all records, including the foster parent record, the child's records and administrative records, as defined in 8.26.5.25 NMAC according to regulations governing such agencies codified at Paragraph (2) of Subsection E of 7.20.11.22 NMAC, Certification Requirements for Child and Adolescent Mental Health Services.

(2) In all closures of PSD licensed, non-treatment foster care agencies, including when an agency's license has expired or goes out of business, or where the agency agency's license has been revoked, the agency shall retain foster parent records, the child's record and administrative records, as defined in 8.26.5.25 NMAC, for five years after the agency has been closed or goes out of business.

(3) In all closures of PSD licensed adoption agencies, including when an agency's license has expired or goes out of business, or where the agency's license has been revoked:

(a) administrative records: the agency shall retain administrative records for five years after the agency has been closed or goes out of business, unless an applicable law requires a retention period for a longer period of time;

(b) parent and child adoptive records in finalized cases: the agency shall transfer finalized parent and child adoptive records to PSD for permanent storage;

(c) parent and child adoptive

records in adoption disruptions or proposed adoptions not finalized: the agency shall retain parent and child adoptive records in cases of disrupted adoptions or proposed adoptions not finalized for five years after the agency has been closed or goes out of business.

[8.26.5.30 NMAC - Rp, 8.27.6.21 NMAC, 5/29/09; A, 8/15/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.77 NMAC Sections 2 and 9, effective 09/02/11.

20.2.77.2 SCOPE: Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through [January 31, 2009] December 31, 2010.

[06/16/95, 11-19-97, 9-8-99; 20.2.77.2 NMAC - Rn 20 NMAC 2.77.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/15/07; A, 08/17/09; A, 09/02/11]

20.2.77.9 ADOPTION OF 40 CFR PART 60: Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through [January 31, 2009] December 31, 2010 are hereby incorporated into this part [20.2.77 NMAC].

[06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.77.9 NMAC - Rn 20 NMAC 2.77.107 & A, 06/02/00; A, 02/18/02; A, 06/13/03; A, 06/15/07; A, 08/17/09; A, 09/02/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.78 NMAC Sections 2 and 9, effective 09/02/11.

20.2.78.2 SCOPE: All sources emitting hazardous air pollutants which are subject to the requirements of 40 CFR Part 61, as amended through [January 31, 2009] December 31, 2010.

[06/16/95, 11/19/97, 09/08/99; 20.2.78.2 NMAC - Rn 20 NMAC 2.78.101 & A, 06/23/00; A, 02/18/02; A, 06/08/07; A, 08/17/09; A, 09/02/11]

20.2.78.9 ADOPTION OF 40 CFR PART 61: Except as otherwise provided, the national emission standards for hazardous air pollutants as promulgated by the United States environmental protection agency, 40 CFR Part 61, as amended in the Federal Register through [January 31, 2009]

December 31, 2010 are hereby incorporated into this part [20.2.78 NMAC].

[06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.78.9 NMAC - Rn 20 NMAC 2.78.107 & A, 06/23/00; A, 02/18/02; A, 06/08/07; A, 08/17/09; A, 09/02/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.82 NMAC Sections 2 and 8, effective 09/02/11.

20.2.82.2 SCOPE: All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through [January 31, 2009] December 31, 2010.

[Rn, 20 NMAC 2.82.2, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.2 NMAC - Rn 20 NMAC 2.82.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09; A, 09/02/11]

20.2.82.8 ADOPTION OF 40 CFR PART 63: Except as otherwise provided in section 20.2.82.10 NMAC (below), the national emission standards for hazardous air pollutants for source categories as promulgated by the US EPA, 40 CFR Part 63, as amended in the Federal Register through [January 31, 2009] December 31, 2010 are hereby incorporated into this part (20.2.82 NMAC).

[Rn, 20 NMAC 2.82.7, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.8 NMAC - Rn 20 NMAC 2.82.106 & A, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/08/07; A, 08/17/09; A, 09/02/11]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

This is an amendment to 1.5.23 NMAC, Sections 8 through 11, effective August 15, 2011.

1.5.23.8 ACQUISITION OF REAL PROPERTY:

A. Public bodies requiring board approval before acquiring real property include, but are not limited to, the following:

(1) general services department;
(2) department of game and fish for expenditures from the game and fish capital outlay fund;

(3) the state for state parks or recreational areas pursuant to section 16-11(J) NMSA 1978.

B. In order to attain approval for acquisition of real property, the board requires that the following information

be provided at the time of submission to the board:

(1) the form of general warranty deed by which the public entity will take title in fee simple absolute containing legal description of the property and warranty covenants; reversions or other forfeiture provisions in the deed shall be accepted only under extraordinary circumstances; special warranty deeds will be accepted only under extraordinary circumstances; when the seller is a public body, transfer of title shall be by quitclaim deed;

(2) a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review from the property tax division of the taxation and revenue department if appraisal was not done by the property tax division; the public entity seeking property tax division review must submit necessary information to the property tax division within time frame specified by the property tax division; when the seller is another governmental entity, neither an appraisal nor [department] property tax division review is required;

(3) full sized site improvement survey plat to verify legal description and to identify the existence of recorded easements and encroachments, if applicable;

(4) a description of the proposed use;

(5) sources of funds used for the purchase;

(6) current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1 through 6, and the first two-thirds of 7 and, to the extent that special exceptions are listed, an explanation of each special exception shown in Schedule B Section II and a statement of impact on intended use of the property as to each special exception;

(7) purchase agreement, if applicable;

(8) phase I environmental assessment for all properties; [-and-a] phase II environmental assessment if recommended by the phase I assessment; explanation of any recognized environmental conditions contained in such assessments and statement of how recognized environmental conditions will impact intended use of the property;

(9) resolution or minutes of the governing body, if applicable, authorizing the purchase and containing a provision making the acquisition subject to approval by the board; and

(10) approval of the disposition by the local government division of the department of finance and administration pursuant to section 3-54-2(D) NMSA 1978 if the entity selling, exchanging or donating the real property is a municipality.

C. Acquisition of real property for more than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.8 NMAC, is not permitted. [1.5.23.8 NMAC - N, 2-14-2001; A, 6-28-2002; A, 9-30-2004; A, 3-15-2010; A, 8-15-2011]

1.5.23.9 SALE OR TRADE OF REAL PROPERTY:

A. If the sale or trade of real property is for a consideration of more than twenty-five thousand dollars (\$25,000), then prior board approval is necessary for:

(1) state agencies (unless the consideration is one hundred thousand dollars (\$100,000) or more, in which case require approval by the legislature is required);

(2) school districts; and

(3) local public bodies, including, but not limited to:

(a) counties;

(b) community colleges (but not including branch community colleges) and technical vocational institutes;

(c) conservancy districts; and

(d) flood control authorities.

B. In order to obtain approval for the sale or trade of real property, the board requires that the following information be provided at the time of submission to the board:

(1) the form of quitclaim deed from the public body transferring title to purchaser containing the legal description of the property;

(2) a copy of a current appraisal completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review by the property tax division of the taxation and revenue department if the appraisal was not done by the property tax division (for both properties if trade); the public entity seeking property tax division review must submit necessary information to the property tax division within time frame specified by the property tax division; when the buyer is another governmental entity, neither an appraisal nor [department] property tax division review is required;

(3) a description of the reason for the sale or trade;

(4) selection process used to determine purchaser; competitive sealed bid, public auction, or negotiation;

(5) purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);

(6) sale agreements, if applicable;

(7) resolution or minutes of the governing body, if applicable, authorizing the sale or trade and containing a provision

making the sale or trade subject to approval by the board;

(8) approval by the state engineer of any transfer of water rights; and

(9) if a school district is seeking approval of a disposition of real property that includes a building, it must submit evidence that the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district, use of the building pursuant to Section 22-8B-4(F) NMSA 1978.

C. Transfer for less than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.9 NMAC, of real property owned by a public entity to any private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution [1.5.23.9 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004; A, 3-15-2010; A, 8-15-2011]

1.5.23.10 LEASE OF REAL PROPERTY:

A. Board approval is required whenever certain public bodies wish to lease (or sub-lease) properties they own (or are leasing): if (1) the term of the lease or sublease is for a period of more than five years, OR (2) the consideration over the lease term is more than twenty-five thousand dollars (\$25,000). Prior board approval is necessary for:

(1) state agencies (unless consideration is one hundred thousand dollars (\$100,000) or more and the term is for a period of more than twenty-five years, in which case approval by the legislature is required);

(2) counties;

(3) school districts (unless leasing facilities to a locally chartered or state-chartered charter school, in which case approval by the public school facilities authority is required); and

(4) local public bodies, which include, but are not limited to, the following:

(a) community colleges (but not including branch community colleges) and technical vocational institutes;

(b) conservancy districts;

(c) flood control authorities; and

(d) special hospital districts and county hospitals pursuant to the Hospital Funding Act.

B. In order to obtain approval for leases of real property, the board requires that at least the following information be provided:

(1) current appraisal completed by a general certified appraiser for commercial

property or a general certified appraiser or a residential certified appraiser for residential property or other evidence of fair market value and report of review from the property tax division of the taxation and revenue department if appraisal was not done by the property tax division; the public entity seeking property tax division review must submit necessary information to the property tax division within time frame specified by the property tax division; when the lessee/tenant is another public body, neither an appraisal nor [department] property tax division review is required;

(2) copy of the lease;

(3) resolution from the governing body, if applicable, approving the lease, and containing a provision making the lease subject to board approval;

(4) the reason for leasing;

(5) description of the selection process used to determine lessee: competitive sealed bid, public auction, or negotiation;

(6) if consideration is being provided by the lessee (or sub-lessee), partially or completely, in the form of services, tangible personal property or construction, evidence that the selection of the lessee (or sub-lessee) complied with the procurement code or is expressly exempted and the term of the lease complies with, section 13-1-150 NMSA 1978, as it may be amended from time to time; and

(7) if a school district is seeking approval of a lease of real property that includes a building, evidence the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district use of the building pursuant to section 22-8B-4(F) NMSA 1978.

C. Rent or other consideration at less than fair market value, as determined by the requirements of Paragraph (1) of Subsection B of 1.5.23.10 NMAC, from a private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution.

[1.5.23.10 NMAC - N, 2-14-2001; A, 6-28-2002; A, 7-15-2003; A, 9-30-2004; A, 3-15-2010; A, 8-15-2011]

1.5.23.11 SUBMISSION OF REQUESTS TO THE STATE BOARD OF FINANCE:

A. Real property transaction requests submitted to the board should address each of the specific items in this policy, if applicable. One hard copy and one identical electronic version should be submitted to the board. The hard copy should be tabbed for easy reference and the electronic version should be bookmarked.

B. Completed packages, in their entirety, must be submitted on or before the board's meeting deadline, as published on the board's website, and must meet application-formatting criteria. Except for full-sized site improvement plats submitted pursuant to Paragraph (3) of Subsection B of 1.5.23.8 NMAC, the hard copy must be standard letter size, 8 1/2 inches by 11 inches.

C. Upon request, the board, in its discretion, may waive provision of any information otherwise required by this rule provided that the requesting party can demonstrate that other documents that are provided are equivalent to or satisfy the rationale for submitting the item and that the state's interest still will be sufficiently protected.

D. The board, in its discretion, may require additional information be provided as may be relevant to a specific transaction.

[1.5.23.11 NMAC -N, 2-14-2001; A, 3-15-2010; A, 8-15-2011]

NEW MEXICO DEPARTMENT OF GAME AND FISH

19 NMAC 35.1, Falconry, filed 12/15/1995 is repealed and replaced by 19.35.8 NMAC, Falconry, effective 1/1/2012.

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 6 MIGRATORY GAME BIRD

19.31.6.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC,
8-15-11]

19.31.6.2 SCOPE: Hunters
of migratory game birds. Additional
requirements may be found in Chapter 17
NMSA 1978 and Chapters 30 and 32 through
36 of Title 19.
[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC,
8-15-11]

**19.31.6.3 S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26
NMSA 1978 provide that the New Mexico
game commission has the authority to
establish rules and regulations that it may
deem necessary to carry out the purpose of

Chapter 17 NMSA 1978 and all other acts
pertaining to protected mammals, birds, and
fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC,
8-15-11]

19.31.6.4 DURATION: August
15, 2011 - March 31, 2012.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC,
8-15-11]

19.31.6.5 EFFECTIVE DATE:
August 15, 2011 unless a later date is cited
at end of individual sections.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC,
8-15-11]

19.31.6.6 O B J E C T I V E :
Establishing seasons on dove, band-tailed
pigeon, sandhill crane, American coot,
common moorhen, common snipe, ducks,
geese, sora, Virginia rail, and setting falconry
seasons for migratory game birds.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC,
8-15-11]

19.31.6.7 DEFINITIONS: Areas,
species, non-toxic shot, and possession limit
defined.

A. "Adult/youth" (A/Y) as
used herein, shall mean that hunt designation
where the adult and youth are permitted to
hunt together.

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

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

**D. "Bernardo north duck
hunt area" (BND)** shall mean that area
north of U.S. 60 on Bernardo waterfowl
management area (WMA).

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

F. "Central flyway" shall
mean that portion of New Mexico east of the
continental divide, with the exception of the
Jicarilla Apache Indian reservation.

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

H. "Dark goose" shall
mean Canada goose or greater white-fronted
goose.

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

J. "Department offices"

shall mean department offices in Santa
Fe, Albuquerque, Raton, Las Cruces, or
Roswell.

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

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

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

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

**O. "Electronic motion
decoys"** shall mean decoys such as spinning
wing decoys that operate by electric motors
or electronic controls.

P. "Established road" is
defined as follows:

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

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

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

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

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

T. "Light geese" shall
mean snow geese, blue phase snow geese,
and Ross's geese.

**U. "Light goose
conservation order"** shall mean those
methods, bag and possession limits, and
dates approved by the U. S. fish and wildlife
service (USFWS) towards reducing over-

abundant light goose populations.

V. "Middle Rio Grande valley dark goose hunt area" shall mean Sierra, Socorro and Valencia counties.

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

X. "Migratory game bird" shall mean band-tailed pigeon, Eurasian-collared dove, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, and Virginia rail.

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

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

AA. "Non-toxic shot" shall mean that non-toxic shot approved for use by the USFWS.

BB. "North zone" shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway north of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

CC. "Pacific flyway" shall mean that portion of New Mexico west of the continental divide including the Jicarilla Apache Indian reservation.

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

EE. "Possession limit" shall mean twice the daily bag limit one can have in their ownership, except where otherwise defined.

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

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

(2) all animals listed as endangered species or subspecies as stated

in regulation(s) set by the state game commission.

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

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

II. "South zone" shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway south of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

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

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

LL. "State game commission owned properties" shall mean all department owned or managed waterfowl management areas, wildlife management areas, Sandhills prairie conservation area and lesser prairie-chicken areas.

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

NN. "Waterfowl management area" (WMA) shall mean Bernardo, Brantley, Casa Colorada, Charette lake, Jackson lake, La Joya, McAllister lake, Salt lake, Seven Rivers, Tucumcari, and W.S. Huey state game commission owned or managed waterfowl management areas.

OO. "Wildlife management area" shall mean Big Hatchet, Colin Neblett, E.S. Barker, Humphries, Marquez, Rio Chama, Sargent, Socorro-Escondida, and Water canyon wildlife management areas, the Sandhills prairie conservation area, and state game commission owned lesser prairie-chicken areas.

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

QQ. "Youth waterfowl hunting days" shall mean the special seasons where only those under 16 years of age may hunt ducks and geese. A supervising

adult must accompany the youth hunter.

[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-15-11]

19.31.6.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt migratory game birds without having purchased a valid license for the current license year. A migratory bird permit number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp).

(1) For band-tailed pigeon hunting and falconry: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

(2) For eastern sandhill crane hunting and falconry: in addition to a valid license, a free federal sandhill crane hunting permit obtained from department offices or website shall be required.

(3) For Estancia valley sandhill crane, middle Rio Grande valley sandhill crane, middle Rio Grande youth-only sandhill crane, southwest sandhill crane hunting, Bernardo WMA light goose, and Bernardo WMA youth-only waterfowl hunting: in addition to a valid license, a special permit obtained by drawing shall be required.

(4) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

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

C. Applications: Applications for Bernardo WMA light goose, Bernardo WMA youth-only light goose, Bernardo WMA youth-only waterfowl, EV sandhill crane, MRGV sandhill crane, SW sandhill crane, and MRGV youth-only sandhill crane hunt permits shall be submitted on the appropriate application form or department website.

(1) For permits issued by drawing, the appropriate application fee as defined by 19.30.9 NMAC shall be required by each applicant per application submitted.

(2) No more than four persons may apply per application. For the MRGV youth-only sandhill crane hunt, no more than two persons may apply per application.

(3) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

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

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

(6) All applications must be mailed to the Santa Fe office or submitted via the department website unless otherwise specifically allowed by rule.

(7) A person desiring a band-tailed pigeon permit shall apply in person at one of the department offices, by mail to the Santa Fe office only, or via the department website. Applicants shall submit their name, mailing address, and the number from their valid hunting license.

(8) The application deadline date for the Bernardo WMA youth-only waterfowl; and EV, MRGV, MRGV youth-only, and SW sandhill crane hunt permits shall be on date(s) set by the state game commission.

(a) For the Bernardo WMA youth-only waterfowl hunt permits, no more than three permits may be awarded per application.

(b) Up to two hunt choices may be awarded by drawing for the Bernardo youth only waterfowl permits.

(c) If any permits are available after the drawing, a person may submit a new application at one of the department offices; up to two hunt choices may be awarded.

(d) Hunters may have a maximum of four Bernardo WMA youth-only waterfowl permits per license year.

(e) Only two applications per hunt code will be drawn, or issued after the drawing for Bernardo youth only waterfowl permits.

(9) The deadline date for application for the Bernardo WMA light goose hunt permits shall be on date(s) set by the state game commission.

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

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

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth-only hunt. **EXCEPTION:** During the youth waterfowl hunt days only those who have not reached their 16th birthday may hunt

waterfowl.

[19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-15-11]

19.31.6.9 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season and hours:

Migratory game birds may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills prairie conservation area hunting hours shall be from one-half hour before sunrise to sunset.

(2) On waterfowl management areas WMAs and the Bottomless lakes overflow, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. For hunting September teal on Bernardo and La Joya WMAs, hunting hours are from one-half hour before sunrise to sunset.

(3) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation, unless otherwise specifically allowed by rule.

(1) There shall be no daily bag or possession limit for Eurasian-collared dove.

(2) There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

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

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any migratory game bird by use of bait such as grain, salt or other feed.

E. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any migratory game bird.

F. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any migratory game bird, unless otherwise specifically allowed by rule. During the light goose conservation order hunt dates, electronic calling devices are allowed.

G. Killing out-of-season: It shall be unlawful to kill any migratory game bird out-of-season.

H. Legal sporting arms and ammunition:

(1) The following are legal

sporting arms for migratory game birds:

(a) shotguns no larger than 10 gauge firing shot, shotguns shall not be capable of holding more than three shells;

(b) muzzle-loading shotguns firing shot;

(c) bows and arrows;

(d) crossbows; and

(e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three shells are lawful.

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

(a) all migratory game bird species, excluding dove, band-tailed pigeons, and eastern sandhill cranes; and

(b) on all state game commission owned lands.

(3) Use of lead shot: It shall be unlawful for any person hunting migratory game birds, other than dove, band-tailed pigeon and eastern sandhill crane, to hunt with or be in possession of any shotgun shells loaded with toxic shot or for any person using a muzzleloader to be in possession of lead shot.

I. Drugs and explosives:

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

J. Proof of species or sex:

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

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

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

(1) License or permit: A person may possess migratory game bird or parts thereof they have lawfully taken (killed) under license or permit.

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

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

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

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

(d) the date and place of the donation.

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

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

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

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

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

(4) Sale of game animal parts: It shall be unlawful to sell or barter any parts or feathers from migratory game birds.

(5) Falconry provisions for possession: The falconry hunter shall not retain nor possess any migratory game bird of bird taken by a raptor except those species of protected birds taken during open falconry season.

L. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any migratory game bird, without first obtaining a permit from the department of game and fish.

M. Use of vehicles and roads in hunting migratory game birds:

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

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

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

(4) Vehicle off of established

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

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

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill migratory game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

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

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any migratory game bird which has clearly been wounded by the licensed mobility impaired hunter. Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed.

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

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

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

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt migratory game birds, camp, or trespass upon state game commission owned lands unless otherwise specifically allowed by rule.

(4) State waterfowl management areas and wildlife management areas open, species that can be hunted, and days open for

hunting: Use of vehicles will be restricted to designated areas.

(a) The Brantley WMA (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for all migratory game bird hunting during established statewide seasons, except the old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(b) Bernardo WMA:

(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the youth waterfowl days. That portion of the Bernardo WMA north of U.S. 60 is open to only youth hunters during each day of the September teal season and the youth waterfowl days.

(ii) That portion of Bernardo WMA east of the unit 7 drain, 600 feet south of U.S. 60 and portions north of U.S. 60, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of Bernardo WMA west of the unit 7 drain, 600 feet south of U.S. 60 and portions north of U.S. 60, shall be open only on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) Designated posted areas of Bernardo WMA north of U.S. 60 are open during the light goose conservation order. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday, Tuesday and Thursday.

(v) Designated areas open for Bernardo youth waterfowl hunts are: North of U.S. 60, between U.S. 60 and the posted closure areas. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday, Tuesday and Thursday.

(c) The Big Hatchet mountain wildlife management area shall be open for dove hunting during established seasons.

(d) The Charette lake WMA shall be open each day of the youth waterfowl days and on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons. Charette lake WMA is closed during the September teal season.

(e) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin

Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting dove and band-tailed pigeon during established seasons.

(f) The portion of Jackson lake WMA west of N.M. 170 shall be open on Mondays, Wednesdays, and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe. The portion of Jackson lake WMA east of N.M. 170 shall be open to falconry only migratory game bird hunting during established seasons.

(g) The lesser prairie-chicken management areas and Sandhills prairie conservation area shall be open to hunt dove during established seasons.

(h) La Joya WMA:

(i) The entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the youth waterfowl days.

(ii) That portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays, and Wednesdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, Sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) That portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(i) The McAllister lake WMA shall be open each day of the youth waterfowl days and on Monday, Wednesday, and Saturday to hunt ducks, light geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(j) The Salt lake WMA shall be open to teal hunting each day of the September teal season and youth waterfowl days and open on Monday, Wednesday, and Saturday for ducks, geese, Virginia rail, sora, common moorhen, American coot and common Snipe during established seasons.

(k) The Seven Rivers WMA shall be open each day of the youth waterfowl days and for migratory game bird hunting in designated areas as posted only on Monday, Wednesday, and Saturday during established statewide seasons.

(l) The Socorro-Escondida wildlife management area shall be open for migratory game bird hunting.

(m) The Tucumcari WMA shall be open each day of the September teal and youth waterfowl days and on Saturday, Sunday, and Wednesday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(n) The William S. Huey WMA shall be open for dove hunting only on Monday, Wednesday, and Saturday during established statewide seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only migratory game bird hunting during established seasons.

(6) All waterfowl management areas shall be open to falconry waterfowl hunting each day of the established falconry season.

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

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

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

(4) Sugarite canyon state park.

(5) Valle Vidal area.

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

(7) That portion of the stilling basin below Navajo dam lying within a line starting from N. M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N. M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

(8) Areas within Valencia county may be closed to migratory game bird hunting that meets the following criteria:

(a) The discharge of a shotgun in the area has been identified by department personnel as a public safety risk because of its proximity to an inhabited area. For the purpose of this section, "public safety risk" shall be defined as a reasonable potential risk of injury at an occupied place of residence.

(b) The discharge of a shotgun in the area is not prohibited by any other statute, rule, regulation or ordinance.

(c) These areas shall be designated by posting of signs and identified on the department website.

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

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

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

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

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

Q. Electronic motion decoys: It shall be unlawful to use electronic motion decoys while hunting waterfowl on those portions of Bernardo WMA, north of U.S. 60.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-15-11]

19.31.6.10 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:

A. 2011-2012 season; all dates are 2011 unless otherwise specified:

species	open areas	season dates	daily bag limit (possession limits are double the daily bag limit after opening day)
dove: mourning and white-winged dove	north zone	Sept. 1-Nov. 9	15 (singly or in aggregate)
	south zone	Sept. 1-Oct. 9 & Dec. 1-31	15 (singly or in aggregate)
Eurasian-collared dove	statewide	Sept. 1-Dec. 31	no bag or possession limit
band-tailed pigeon (free permit required)	southwest BPHA regular BPHA	Oct. 1-20 Sept. 1-20	5 5
sandhill crane (free permit required)	eastern	Oct. 31- Jan. 31, 2012	3
sandhill crane (special draw permit required)	MRGV	Oct. 29- Oct. 30	3 (6 per season)
	EV	Oct. 29 - Nov. 6	3
	southwest	Oct. 29 - Nov. 6	3
	MRGV	Nov. 19-20	3 (6 per season)
	MRGV	Dec. 3-4	3 (6 per season)
	southwest	Jan. 7-8, 2012	3 (6 per season)
	MRGV	Jan. 14-15, 2012	3 (6 per season)
	MRGV youth-only	Nov. 12	3 (possession-6; regular and special seasons combined)

CENTRAL FLYWAY

species	season dates	daily bag limit (possession limits are double the daily bag limit after opening day)
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 17-25	4 (singly or in the aggregate)
youth waterfowl days; north zone	Oct. 1-2	same as north zone
youth waterfowl days; south zone	Oct. 15-16	same as north zone
ducks: north zone	Oct. 8 - Jan. 11, 2012	6 (singly or in the aggregate); that consists of no more than 5 mallard (of which only 2 may be female mallard, [Mexican-like ducks are included towards the mallard bag limit]); 3 wood duck; 2 redhead; 2 hooded mergansers; 2 pintail, 2 scaup, and 1 canvasback
south zone	Oct. 26 - Jan. 29, 2012	same as north zone
American coot	same as above zone dates	15
common moorhen	Oct. 1 - Dec. 9	1
common snipe	Oct. 15 - Jan. 29, 2012	8
Virginia rail & sora	Sept. 17 - Nov. 25	10 (singly or in the aggregate)

dark goose: Canada & white-fronted geese (regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 15 - Jan. 29, 2012	4
special MRGV season	Dec. 31 – Jan. 22, 2012	2 (2 per season)
light goose: Ross's & snow geese	Oct. 15 - Jan. 29, 2012	20/80 possession
light goose conservation order	Feb. 1, 2012 - Mar. 10, 2012	no bag or possession limit

PACIFIC FLYWAY

Species	season dates	daily bag limit (possession limits are double the daily bag limit after opening day)
youth waterfowl days	Oct. 1-2	same as regular season below; including scaup
ducks:	Oct. 17 - Jan. 29, 2012	7 (singly or in the aggregate)-- that consists of no more than 2 female mallard, 2 redhead, 2 pintail, 1 canvasback
Scaup	Nov. 5 - Jan. 29, 2012	3 daily included in the aggregate duck bag
American coot and common moorhen	Oct. 17 - Jan. 29, 2012	12 daily (singly or in the aggregate)
common snipe	Oct. 15 - Jan. 29, 2012	8
Virginia rail & sora	Sept. 17 - Nov. 25	10 daily (singly or in the aggregate)
goose: north zone	Sept. 24 - Oct. 9 and Oct. 31 - Jan. 29, 2012	3 dark geese, 10 light geese
south zone	Oct. 15 - Jan. 29, 2012	2 dark geese, 10 light geese

B. Light goose conservation measures: Under the director's discretion with the verbal concurrence of the state game commission chairman or his designee, the department may implement the light goose conservation measures approved by the USFWS. Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS. A free permit is required. [19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-15-11]

19.31.6.11 FALCONRY SEASONS:

A. Species that can be taken, open areas, and hunting seasons: 2011-2012 season, all dates are 2011 unless otherwise specified:

(1) The season for dove shall be statewide and shall be open September 1 through November 12 and November 28 through December 31.

(2) The season for band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2012 for the southwest hunting area. A free permit is required.

(3) The season for sandhill crane shall be in the eastern New Mexico sandhill crane hunt area and shall be open from October 17 through January 31, 2012. A free permit is required.

(4) The season for sandhill crane in the Estancia valley shall be October 29 through December 27.

(5) Duck: central flyway seasons shall be open in the north zone - September 17-25, October 1-2, and October 8 through January 11, 2012; south zone - September 17-25, October 15-16, and October 26 through January 29, 2012. Pacific flyway seasons shall be as follows: October 1-2, and October 17 through January 29, 2012.

(6) Light goose: central flyway seasons shall be open October 15 through January 29, 2012. Pacific flyway season shall be north

zone - September 24 through October 9, and October 31 through January 29, 2012; south zone - October 15 through January 29, 2012.

(7) Dark goose: central flyway seasons shall be open October 15 through January 29, 2012. Pacific flyway season shall be north zone - September 24 through October 9, and October 31 through January 29, 2012; south zone - October 15 through January 29, 2012.

(8) Common snipe: central and Pacific flyways seasons shall be October 15 through January 29, 2012.

(9) Common moorhen: central flyway season shall be October 1 through January 15, 2012. Pacific flyway season shall be October 1-2, and October 17 through January 29, 2012.

(10) Sora and Virginia rails: central and Pacific flyways seasons shall be September 17 through January 1, 2012.

B. Daily bag limits: shall be three birds (singly or in the aggregate) and possession limits shall be six birds (singly or in the aggregate) as established herein.

(1) There is no daily bag or possession limit on Eurasian-collared dove.

(2) Season limit for sandhill crane in the Estancia valley shall be 9 birds.

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 8-15-11]

19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO LIGHT GOOSE HUNT:

A. Up to 24 permits at Bernardo WMA, per hunting day, will be available. Applications submitted for the LTG-O-102 hunt must have a minimum of one youth hunter and one hunter over 18 years of age.

B. Hunt dates for the Bernardo light goose hunts.

LTG-O-101 12/30

LTG-O-102 1/21/2012

LTG-O-103 1/23/2012

C. Only 30 rounds per hunter will be allowed at the blinds when participating in the Bernardo WMA light goose special permit hunts.

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 8-15-11]

19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT:

A. Up to 12 permits will be available for the December 28 (YLG-O-101) youth-only light goose hunt at Bernardo WMA.

B. Only 30 rounds per hunter will be allowed at the blinds when participating in the Bernardo WMA light goose special permit hunts.

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-15-11]

19.31.6.14 YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. Youth hunters must be under 16 years old.

B. An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

C. Only ducks, coots, and moorhens may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).

[19.31.6.14 NMAC - Rp, 19.31.6.15 NMAC, 8-15-11]

19.31.6.15 REQUIREMENTS AND HUNT CODES FOR THE SPECIAL BERNARDO YOUTH WATERFOWL HUNT AREA:

A. The Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of a minimum of one youth hunter, under 18 years of age, and a supervising adult.

B. Requirements for blind selection:

(1) Blind selection during the September teal season and federal youth waterfowl days including weekends is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(2) Blind selection on weekdays between October 29 through December 15 and January 2-29, 2012 is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(3) Blind selection on all weekends and weekdays between December 17 and January 1, 2012 will be available by permit only issued by drawing.

(a) up to two hunt choices may be awarded by drawing;

(b) if any permits are available after the drawing, a person may submit a new application at one of the department offices; up to two hunt choices may be awarded; hunters may have a maximum of four Bernardo youth-only permits per license year;

(c) only two applications per hunt code will be drawn, or issued after the drawing.

C. 2011-2012 season, hunt codes and permits available:

hunt date	hunt code	no. of permits	hunt date	hunt code	no. of permits
October 29	BNY-0-101	6	December 21	BNY-0-119	6
October 30	BNY-0-102	6	December 22	BNY-0-120	6
November 5	BNY-0-103	6	December 24	BNY-0-121	6
November 6	BNY-0-104	6	December 25	BNY-0-122	6
November 12	BNY-0-105	6	December 26	BNY-0-123	6
November 13	BNY-0-106	6	December 27	BNY-0-124	6
November 19	BNY-0-107	6	December 28	BNY-0-125	6

November 20	BNY-0-108	6		December 29	BNY-0-126	6
November 26	BNY-0-109	6		December 31	BNY-0-127	6
November 27	BNY-0-110	6		January 1	BNY-0-128	6
December 3	BNY-0-111	6		January 7	BNY-0-129	6
December 4	BNY-0-112	6		January 8	BNY-0-130	6
December 10	BNY-0-113	6		January 14	BNY-0-131	6
December 11	BNY-0-114	6		January 15	BNY-0-132	6
December 17	BNY-0-115	6		January 21	BNY-0-133	6
December 18	BNY-0-116	6		January 22	BNY-0-134	6
December 19	BNY-0-117	6		January 28	BNY-0-135	6
December 20	BNY-0-118	6		January 29	BNY-0-136	6

D. Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas.

(1) That portion of Bernardo WMA east of the unit 7 drain, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(2) That portion of Bernardo WMA west of the unit 7 drain, shall be open only on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

E. Use of motorized motion decoys is prohibited.
[19.31.6.15 NMAC - Rp, 19.31.6.16 NMAC, 8-15-11]

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

A. Nine separate sandhill crane seasons are scheduled with up to a total of 474 permits available. The permits will be allocated by season as follows: 2011-2012 season:

season dates	hunt code	hunt location	no. of permits
October 29-30	SCR-0-101	MRGV	75
October 29- November 6	SCR-0-102	EV	60
November 19-20	SCR-0-103	MRGV	65
December 3-4	SCR-0-104	MRGV	65
October 29- November 6	SCR-0-105	SW	60
January 14-15, 2012	SCR-0-106	MRGV	65
January 7-8, 2012	SCR-0-107	SW	60
November 12	SCR-0-109	MRGV youth	24

B. Hunters who participate in the MRGV seasons shall be required to check-out at designated check stations when they harvest any sandhill cranes.

C. All EV, MRGV, and SW sandhill crane hunters are required to submit a special permit sandhill crane harvest report to the department within five days after the end of their hunt. Hunters that do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a sandhill crane permit the following year.
[19.31.6.16 NMAC - Rp, 19.31.6.17 NMAC, 8-15-11]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 35 CAPTIVE WILDLIFE
USES
PART 8 FALCONRY**

19.35.8.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.35.8.1 NMAC - Rp, 19 NMAC 35.1.1, 01/01/2012]

19.35.8.2 SCOPE: Members of

the public interested in the participating in the sport of falconry. Seasons for protected species which may be taken through falconry are found in Chapter 31 Part 5 and Part 6, and the license fee is found in Chapter 30 Part 1.
[19.35.8.2 NMAC - Rp, 19 NMAC 35.1.2, 01/01/2012]

**19.35.8.3 S T A T U T O R Y
AUTHORITY:** Sections 17-1-14 and 17-1-26 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.

[19.35.8.3 NMAC - Rp, 19 NMAC 35.1.3, 01/01/2012]

19.35.8.4 D U R A T I O N :
Permanent.
[19.35.8.4 NMAC - Rp, 19 NMAC 35.1.4, 01/01/2012]

19.35.8.5 EFFECTIVE DATE:
January 1, 2012, unless a later date is cited at the end of a section.
[19.35.8.5 NMAC - Rp, 19 NMAC 35.1.5, 01/01/2012]

19.35.8.6 O B J E C T I V E :
Establish rules for the use of protected raptors used in falconry activities.

[19.35.8.6 NMAC - Rp, 19 NMAC 35.1.6, 01/01/2012]

19.35.8.7 DEFINITIONS:

A. "Band" shall mean a permanent, nonreusable, numbered federal raptor leg band supplied by the department or by the USFWS.

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

C. "Eyass" shall mean a young raptor not yet capable of flight.

D. "Falconry" shall mean the ownership, caring for, and training of raptors for the pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking, or possession of captive bred or wild raptors to use in the sport; and includes the transfer, and transporting of raptors.

E. "Hack" or "hacking" shall mean the temporary release of a raptor held for falconry to the wild so that it may survive on its own.

F. "Hybrid" means offspring of any one species in Section 10.13 of Subchapter B of Title 50 of the Code of Federal Regulations and any other species, or of any two species in Section 10.13 of Subchapter B of this chapter, and any progeny of those birds.

G. "Imping" to graft or repair (a wing, tail, or feather) with a feather to improve a falcon's flying capacity.

H. "Imprint" shall mean a raptor that is hand-raised in isolation from two weeks of age until it has fledged, and has identified itself with humans rather than its own species. An imprinted raptor is considered to be so for its entire lifetime.

I. "Microchip" shall mean an ISO (international organization for standardization) compliant (134.2 khz) microchip purchased and supplied by the falconer permit holder.

J. "Passage bird" shall mean a raptor in its first year.

K. "Raptors" shall mean a migratory bird of the Order Accipitriformes, the Order Falconiformes or the Order Strigiformes listed in Section 10.13 of Title 50 of the Code of Federal Regulations, including the bald eagle (*Haliaeetus leucocephalus*), and the golden eagle (*Aquila chrysaetos*).

L. "Raptor-taking permits" shall mean permits to take raptors from the wild for falconry purposes.

M. "Temporary foreign visitor" shall mean a foreign national, not an alien residing permanently in the United States, who qualifies as a general or master class falconer.

N. "USFWS" shall mean the United States fish and wildlife service.

[19.35.8.7 NMAC - Rp, 19 NMAC 35.1.7,

01/01/2012]

19.35.8.8 F A L C O N E R PERMITS:

A. Permit requirement to practice falconry in New Mexico: A New Mexico falconer permit, a New Mexico temporary foreign visitor falconer permit or, for nonresidents, a valid state permit or a nonresident temporary foreign visitor falconer permit from another state is required.

B. Duration of falconer permits: All falconer permits shall be issued for a period not to exceed five years and shall expire March 31. All falconer permits may be renewed if the permittee has not violated relevant state or federal laws or regulations. [19.35.8.8 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.9 REQUIREMENTS FOR ISSUANCE OF FALCONER PERMITS: The director of the department may issue a falconer permit to an applicant who meets the following requirements.

A. The applicant must qualify as a resident of New Mexico, as prescribed by Chapter 17-3-4 NMSA 1978 Compilation.

B. Falconer permits may not be transferred to other persons.

C. Age, experience, sponsorship:

(1) Apprentice permit:

(a) The applicant for an apprentice permit must be at least 12 years of age and must have the written consent of a parent or legal guardian to assume responsibility for the apprentice's activities if under 18 years of age.

(b) A sponsor who holds a New Mexico general permit with two years experience, or a master permit, is required until the apprentice advances to general falconer.

(c) The applicant for an apprentice permit shall name the sponsor in the application submitted and shall include a letter from the sponsor indicating his or her willingness to sponsor the apprentice.

(d) The applicant for an apprentice permit must successfully pass the state falconry examination before he or she will be granted an apprentice permit.

(2) General permit:

(a) The applicant for a general permit must be at least 16 years of age. If the applicant for a general permit is under 18 years of age, a parent or legal guardian must sign the general permit application to assume responsibility for the applicant's activities.

(b) The general permit applicant shall submit a letter from a general or master falconer (preferably the applicant's sponsor) that the applicant shall have had at least two

years experience in the practice of falconry at the apprentice level or its equivalent, including maintaining, training, flying and hunting raptor(s) for at least four months in each year. That practice may include capture and release of falconry raptors.

(c) An applicant for a general falconer permit may not substitute any falconry school program or education to shorten the period of two years at the apprentice level.

(3) Master permit: The applicant for a master permit shall have had at least five years experience in the practice of falconry at the general class level or equivalent experience.

(4) Temporary foreign visitor permit:

(a) A temporary foreign visitor may not apply for a permit at the apprentice class level.

(b) The applicant shall present evidence by letters of recommendation and experience, written in the English language, by other falconers or officials who have personal knowledge of the applicant's falconry experience, including the species of raptors previously flown and the number of years practicing falconry.

(c) The applicant for a temporary foreign visitor permit must pass the state falconry examination.

(d) Based on the evidence provided, the department shall determine the class level for the applicant as general or master class.

(e) A temporary foreign visitor applicant must present proof of legal temporary status in the United States by the immigration and naturalization service.

(f) A temporary foreign visitor applicant must be sponsored by a New Mexico resident general or master class falconer. The applicant shall present a letter with the application from the resident sponsor which shall confirm that the applicant may house and care for the applicant's raptors at the sponsor's falconry facilities. A New Mexico temporary foreign visitor permittee's sponsor may fly, house and care for the permittee's raptors, when provided a 3-186A form and letter of authorization, if the permittee intends to return to New Mexico regularly to practice falconry. Proof of the length of stay may be provided by a copy of the applicant's foreign passport or other immigration and naturalization service documentation.

(g) A permanent resident alien who resides permanently in New Mexico may not apply for a temporary foreign visitor permit, but may apply for a resident falconer permit.

D. Examination:

(1) The applicant for an apprentice or temporary foreign visitor permit shall answer correctly at least 80 percent of the questions on the examination relating to

basic biology, care and handling of raptors, laws and regulations, disease, literature and other appropriate subject matter.

(2) The examination shall be conducted under supervised conditions by a department employee or a permitted master falconer representing the department.

(3) An applicant who fails to pass an examination must wait three months to retake it.

E. Fees:

(1) The applicant shall submit payment with the original application.

(2) Prior to examination, the applicant shall submit a nonrefundable examination fee of \$10.00. A person who fails to pass the examination shall not be required to pay additional examination fees when retaking the examination.

[19.35.8.9 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.10 CLASSES OF FALCONER PERMITS AND AUTHORIZED POSSESSION:

A. Apprentice permit:

(1) An apprentice falconer permittee may possess one American kestrel (*Falco sparverius*) or one red-tailed hawk (*Buteo jamaicensis*).

(2) An apprentice falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit.

(3) An apprentice falconer may present a conservation education program when accompanied by a master or general permit holder. A conservation education program shall provide information on raptor biology, ecological roles and conservation needs, and the permit holder may charge a fee to cover costs.

B. General permit:

(1) A general falconer permittee may possess not more than three raptors (including hybrids). The permittee may possess any wild-caught or captive-bred raptor except for eagle species and any other species restricted by the department.

(2) A general falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit.

(3) A general falconer may use a bird held under a falconer permit for conservation education programs presented in a public venue. A conservation education program shall provide information on raptor biology, ecological roles and conservation needs and the permit holder may charge a fee to cover costs.

(4) A general falconer with two or more years of experience at the general falconer level may sponsor up to two apprentice falconers.

C. Master permit:

(1) The master falconer permit

shall authorize the permittee to possess not more than five wild-caught raptors and unlimited captive-bred raptors (including hybrids) if used for falconry, not to include any species listed as endangered in Title 50, Code of Federal Regulations, Part 17, except captive-bred endangered species per Title 50 Code of Federal Regulations, Part 17.

(2) The five wild-caught raptors authorized may include no more than a total of three golden eagles, white-tailed eagles, or Steller's sea eagle, and may include not more than three raptors listed as threatened in Title 50, Code of Federal Regulations, and then only in accordance with the provisions of Part 17.

(3) To possess a golden eagle, white-tailed eagle, or Steller's sea eagle, a master falconer shall submit to the department a written request to possess individuals of the listed species. The written request must contain a description of the applicant's experience in handling large raptors, including information about the species handled and the type and duration of the activity in which the applicant has engaged. The written request required by this subsection must be accompanied by at least two letters of reference from people with experience handling or flying large raptors such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), or great horned owls. Each letter of reference must contain a concise history of the applicant's experience with large raptors, and must attest to the applicant's ability to care for eagles and fly them in falconry. A master falconer may take up to two golden eagles within a calendar year where it is permitted under a depredation permit.

(4) A master falconer may conduct abatement activities with raptors possessed under his or her falconry permit, provided the raptors are captive-bred and the permittee has obtained a federal abatement permit for that purpose. No person other than the master falconer to whom an abatement permit has been issued and their subpermittee falconers may use a raptor possessed under a falconry permit to conduct abatement activities.

(5) A master falconer may receive payment, and may pay a general or apprentice falconer for providing abatement services under a federal permit for that purpose.

(6) A master falconer may use a raptor held under a falconer permit for conservation education programs presented in a public venue. A conservation education program shall provide information on raptors' biology, ecological roles and conservation needs, and the permit holder may charge a fee to cover costs.

(7) A master falconer may sponsor up to three apprentices.

D. Temporary foreign visitor permit:

(1) The temporary foreign visitor

falconer permit shall authorize the permittee to possess no more than three captive-bred raptors or hybrids if the permittee is determined to be a general class falconer or five captive-bred raptors or hybrids if the permittee is determined to be a master class falconer.

(2) A temporary foreign visitor falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit.

(3) A temporary foreign visitor falconer may not act as a sponsor for an apprentice falconer.

E. Nonresident reciprocity:

(1) The department shall grant reciprocity and accept a permit issued to a nonresident falconer temporarily in New Mexico.

(2) The department shall accept a permit issued to a non-resident falconer permanently moving to New Mexico for the period required to establish residency and to meet all other requirements to qualify for a New Mexico resident falconer permit.

[19.35.8.10 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.11 DIRECTORS AUTHORITY AND TAKING OF RAPTORS: The director of the department may develop a policy to permit raptor take.

A. A raptor may be taken by a resident falconer who holds a valid falconer permit.

(1) The holder of a valid falconer permit, may, at any time of the year, recapture by means of traps or nets any escaped raptor that was legally possessed.

(2) The holder of a New Mexico general or master falconer permit may, take an eyass or passage raptor as permitted herein.

(3) Any raptor taken shall be reported to the department within 10 days. The notification shall be filed through the USFWS 3186-A electronic reporting system unless otherwise required or approved by the department.

(4) No falconer shall possess a species raptor not authorized by his or her permit

(5) No falconer shall exceed the number of raptors authorized by his or her permit..

B. Withholding of raptor-taking permits: The taking of any species whose wild populations in New Mexico that are significantly or adversely affected by such take may be withheld through the director's raptor take policy.

C. Raptor-taking seasons:

(1) Eyasses may be taken from April 1 through January 15 of the subsequent year, and only by holders of general or master falconer permits. No more than two eyasses may be taken by a permittee during

the raptor-taking season.

(2) Passage raptors may be taken from April 1 through January 15 of the subsequent year.

D. Age restrictions of raptors to be taken:

(1) No raptor older than one year of age may be taken other than the American kestrel (*Falco sparverius*) or the great horned owl (*Bubo virginianus*).

(2) A holder of a general or master falconer permit may acquire a raptor older than one year of age if it was taken from the wild for the purpose of controlling depredation or for its rehabilitation and if the permittee may legally possess it.

E. Limits on taking of raptors:

(1) A falconer may take no more than two raptors from the wild during any calendar year.

(2) A general or master falconer may take one raptor of a federally-listed threatened species of raptor during any calendar year, if he or she has an endangered species permit issued by the USFWS.

F. Valid area: Raptors shall be taken only in areas specified by the department in the director's raptor take policy.

G. Eligibility for and species authorized for nonresident raptor-taking permits; reports:

(1) A raptor-taking permit may be issued only to a person who holds a valid falconer permit from a state that allows a nonresident take of raptors.

(2) Nonresidents may take only those species as defined in the director's raptor take policy and each raptor take permit shall be issued only for those species authorized for resident falconers of equivalent class.

(3) A raptor taken by a nonresident must be reported on the USFWS 3186-A electronic reporting system within 10 days of capture.

H. Means of taking: Raptors shall not be taken with steel-jawed traps, chains, jump traps, or pole traps, but may be taken as authorized by the director.

[19.35.8.11 NMAC - Rp, 19 NMAC 35.1.8, 01/01/2012]

19.35.8.12 FACILITIES AND EQUIPMENT:

A. Inspection of facilities. An inspection is required for all new applicants and at the time of renewal if the permitted falconer is an apprentice falconer, or if the facilities have been moved. If a department officer or a master falconer representing the department has inspected the applicant's falconry facilities and equipment and found that they meet or exceed the standards below, the inspecting department officer or master falconer must

submit a signed certification of the facility, the equipment and the inspection to the Santa Fe office of the department before the permit is issued or renewed.

B. Indoor facilities must be large enough to allow easy access for care of raptors. Each raptor must have an area large enough to allow it to fly if it is untethered or if tethered, to fully extend its wings or bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.

(1) If more than one raptor is to be kept in a single facility, the raptors must be separated by partitions or tethered, or raptors may be housed untethered together if they are compatible with each other.

(2) If raptors housed in this indoor facility are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor to be housed in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.

(3) Each raptor must have a pan of clean water available unless weather conditions, perch type, or some other factor makes access to water unsafe for the raptor. There shall be at least one window for sunlight, and must provide a healthy environment for raptors inside, and a secure door that can be easily closed. The floor shall permit easy cleaning and shall be well drained. Acceptable indoor facilities include shelf perch enclosures where raptors are tethered side by side.

(4) Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and maintain healthy feathers. Falconry raptors may be kept inside a residence, raptors must be tethered and each raptor must have a suitable perch. The residence windows or other openings do not need to be modified.

C. Outdoor facilities: If the applicant also provides outdoor facilities, they shall meet the following standards:

(1) An outdoor facility must be totally enclosed, and may be made of heavy gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material.

(2) The facility must be covered and have at least a covered perch to protect a raptor held in it from predators and weather. The facility must be large enough to insure that the raptors cannot strike the enclosure when flying from the perch.

(3) New types of housing facilities or husbandry practices may be used if they satisfy the requirements above.

D. Equipment: The following items shall be in the applicant's possession before issuance of a falconer permit.

(1) Jesses. At least one pair of

Aylmeri or Aylmeri type jesses, constructed of pliable, high-quality leather or suitable synthetic material, for use when the raptor is flown free.

(2) Leash and swivel. At least one flexible, weather-resistant leash and one strong swivel of acceptable falconry design.

(3) Bath. At least one water container, two to six inches deep, and wider than the length of the raptor, for each raptor.

(4) Outdoor perch. At least one weathering area perch for each raptor, of acceptable design for the species of raptor.

(5) Weighing device. A reliable scale or balance suitable for weighing the species of raptor(s).

(6) Feathers: A permittee may retain molted feathers and feathers from raptors that die in captivity but may use them only for imping, or may donate feathers, except golden eagles feathers, to any person or institution with a valid permit to have them.

E. Facilities for temporary holding or transportation of raptors: Any temporary facility for transporting or holding a raptor shall have an appropriate perch and be protected from extreme temperatures and excessive disturbance. No raptor shall be held in such a temporary facility for more than 120 days unless authorized by the department for extenuating circumstances.

F. Bands and transmitters:

(1) Species requiring a band: A nonreusable numbered band must be attached to every wild goshawk, gyrfalcon (*Falco rusticolus*), Harris's hawk, and peregrine falcon (*Falco peregrinus*) held for falconry. Bands for additional species may be required by the department.

(2) It shall be illegal to alter, counterfeit or deface a band. However, a falconer permittee may remove the rear tab from the nonreusable bands and may smooth any imperfect surface, if doing so does not affect the integrity of the band or its number.

(3) Return of band: The permittee shall remove and return the band to the department from any raptor that dies or is released with the exception of released captive bred raptors.

(4) Transmitters: When flown for falconry, a hybrid raptor must have two attached radio transmitters that will allow the permittee to locate it in the event of loss or failure of a single transmitter.

G. Maintenance; revocation and renewal of permits:

(1) Facilities and equipment: Each falconer permittee must, maintain his or her falconry facilities and equipment at or above the standards met to qualify for the permit. An officer of the department may inspect the falconer's facilities and equipment at any reasonable hour only in the presence of the falconer permittee; except under exigent circumstances.

(2) Revocation and renewal: Falconer permits may be revoked or renewals denied for failure to maintain facilities or equipment or for violation of the provisions of this regulation or of Chapter 17-2-14 NMSA 1978 Compilation.

H. Reports:

(1) Department report: Upon request from the department, a permittee must report on operations conducted under the authority of his or her permit. A report from an apprentice falconer must be co-signed by the sponsor.

(2) Federal report: A permittee who takes, purchases, receives or otherwise acquires, sells, barter, transfers or otherwise disposes of a raptor shall be reported to the department within 10 days. The notification shall be filed through the USFWS 3186-A electronic reporting in accordance with appropriate state and federal regulations. [19.35.8.12 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.13 IMPORTATION, TRANSPORT AND TEMPORARY HOLDING:

A. Importation: A copy of a valid falconer permit shall suffice as an importation permit for raptors brought into the state.

(1) A permitted falconer may import any raptor from another state, provided that the permittee does not exceed the number and species of raptors that can be held under his or her permit.

(2) The holder of a New Mexico temporary foreign visitor falconer permit may only import captive-bred raptor(s) from another state, provided the falconer does not exceed the number and species of raptors that he or she may possess.

B. Temporary importation: an importation permit is not required by nonresident falconers temporarily importing and possessing a raptor while in transit or for the purpose of falconry.

C. Relocation importation: a permitted falconer shall notify the department prior to relocating to New Mexico with a legally possessed raptor. Within 10 days of the arrival, notification shall be filed through USFWS 3-186A electronic reporting system unless otherwise required or approved by the department. The permittee shall document that the raptor was legally obtained, with such certificates, permits to take, federal form 3-186A submitted by the raptor propagator, etc.

D. Transportation of raptors:

(1) A New Mexico falconer may transport within New Mexico a raptor held under his or her permit and raptor(s) held for another falconer while in temporary care.

(2) A permittee may remove the raptor from New Mexico for meets, trials,

and hunting in other states and return the raptor to New Mexico without obtaining New Mexico importation permit, provided the falconer permittee obtains any permit or license required for this activity by the state into which the raptor is taken.

(3) A nonresident falconer does not need an importation permit to bring a falconry raptor(s) into New Mexico for hunting or attending a falconry meet as provided in Chapter 17-3-32.1 NMSA 1978 Compilation.

E. Temporary holding of raptors: Raptors possessed under authority of a New Mexico falconry permit may be temporarily held or flown by another person (caretaker) at a location different than the falconer's.

(1) The permittee shall provide such caretaker with a signed statement authorizing the temporary transfer of the raptor to the caretaker and the temporary holding facility, as well as a copy of the federal 3186A form showing the permittee legally acquired the raptor.

(2) If the period of care will exceed 120 days, the permittee shall send written notification of such extended temporary care to the department no later than five days prior to the temporary care.

(3) The care of a permittee's raptor may be extended indefinitely by the department in extenuating circumstances such as illness, military service, or family emergency. Notification shall include the name and location of the caretaker, the reason for the extended temporary care, whether the raptor(s) may be exercised and flown, and approximately how many days the caretaker will be responsible for the raptor(s). [19.35.8.13 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.14 RELEASE OF RAPTORS: A permittee who wishes to release a raptor must notify the department 10 days before the intended release date.

A. The department will respond to the request within the 10 day period, and the raptor may be released back into the wild in accordance with approval and instruction from the department.

B. The department may require a period of hacking the raptor back to the wild at an appropriate time of year and an appropriate location.

C. The intentional permanent release of hybrid raptors is prohibited.

[19.35.8.14 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.15 R A P T O R PROPAGATION: A federal permit is required for raptor propagation and activities associated with it are permitted in accordance with Title 50, Code of Federal Regulations,

Section 21.30. No additional state permit is required.

A. A falconry raptor may be temporarily used for propagation without notice of transfer by individuals permitted to conduct raptor propagation.

B. A permittee may transfer a wild-caught falconry raptor to a raptor propagation permit after the raptor has been used in falconry for at least two years (one year for a sharp-shinned hawk (*Accipiter striatus*), a Cooper's hawk (*Accipiter cooperii*), a merlin (*Falco columbarius*), or an American kestrel).

C. When transferred to a propagation permit the acquisition of the raptor by the propagator shall be reported to the department within 10 days. The notification shall be filed through the USFWS 3186-A electronic reporting in accordance with appropriate state and federal regulations.

D. Raptors possessed for propagation, including all progeny produced pursuant to the permitted activity, must be identified with a band issued by the department. A falconer may purchase and implant an ISO microchip in addition to the band.

[19.35.8.15 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

HISTORY OF 19.35.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: DGF 76-5, Regulation No. 575, Regulation of Falconry Activities, 5/25/76.

DGF 76-5, Amendment No. 1, Order No. 9-76, Amending Regulation No. 575, 12/6/76.

DGF 76-5, Amendment No. 2, Order No. 2-79, Amending Regulation No. 575, 2/23/79.

Regulation 639, Regulation of Falconry Activities, 9/11/85.

Regulation 688, Regulation of Falconry Activities, 8/6/91.

History of Repealed Material:

19 NMAC 35.1, Falconry, filed 12/15/1995 - Repealed effective 12/31/2011

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.32.2 NMAC, Sections 7, 8, 9, 10, 11, 13, and 14 effective 8-15-2011.

19.32.2.7 DEFINITIONS:

A. "Land set," as used herein, shall mean any trap or snare set on land.

B. "Water set" shall mean any trap or snare set fully or partially in water.

C. "[~~Conibear-type~~] Body-gripping traps" shall mean a rotating jaw trap designed to capture an animal by the body.

D. "Agent" shall mean any New Mexico resident who is registered, by the trapper, with the department of game and fish. No fur dealer may act as an agent. Agents must have a valid trapper license.

E. "Lamination" shall mean modifying the jaw thickness of a foot-hold trap by fastening a strip of metal (rod or flat stock) [~~above or and below~~] to the trap jaw that increases the contact surface area of the trap jaw.

F. "Off-set" shall mean a space measuring a minimum of 3/16 inch between the contact surfaces of the closed jaws of a foot-hold trap.

G. "[~~Natural or man-made~~] Cubby set" shall mean a natural or man-made close ended hole, structure, bucket or declivity, or open-ended "tunnel-type" enclosure used for the purpose of trapping protected furbearers.

H. "Jaw spread" shall mean the distance between the jaws when measured across the center of the trap and perpendicular to a line drawn through the pivot points of the jaws when the trap is in the set position. Jaw spread for padded jaw traps shall be measured from the metal portion of the jaw in the manner previously described.

I. "Steel trap" shall mean a spring actuated device designed to capture an animal by the foot [~~-leg~~] or body [gripping].

J. "Padded jaw" shall mean steel traps either constructed or modified so that the closure portion of the jaw is padded with a soft material such as rubber or canvas.

K. "Snare" shall mean a wire or cable with a single closing device set to capture a furbearer.

L. "Furbearer" shall mean any quadruped defined as a fur-bearing animal in 17-5-2 NMSA 1978.

M. "Pursuit" shall mean to

chase by dogs without the intent to kill.

[4-1-95; 19.32.2.7 NMAC - Rn, 19 NMAC 32.1.7, 9-29-00; A, 4-1-03; A, 4-1-07; A, 8-15-11]

19.32.2.8 OPEN SEASONS AND OPEN AREAS:

A. Badger, weasel, fox, ringtail and bobcat: November 1 through March 15, statewide.

B. Raccoon:

(1) Trapping and hunting: April 1-May 15 and September 1-March 31 statewide.

(2) Pursuit only: April 1-March 31 statewide.

C. Beaver, nutria and muskrat: April 1-April 30 and November 1-March 31, statewide, provided that no beaver trapping shall be permitted on any public lands within the exterior boundaries of any national forest, except those public lands within the Carson and Santa Fe national forest.

D. Wildlife management areas shall only be open for taking of furbearers or other trapping activities as authorized by the director.

[4-1-95; 19.32.2.8 NMAC - Rn, 19 NMAC 32.1.8, 9-29-00; A, 02-28-01; A, 4-1-07; A, 8-15-11]

19.32.2.9 BAG LIMIT: [~~There shall be no bag limit on any furbearer unless sport harvest exceeds estimated total sustainable harvest in the furbearer population assessment and harvest management matrix as approved by the commission.~~] There shall be no bag limit on any furbearer. The director, with the verbal concurrence of the chairman or his designee, may set a bag limit for furbearers to address significant changes in population levels or to address critical department management needs.

[4-1-95; 19.32.2.9 NMAC - Rn, 19 NMAC 32.1.9, 9-29-00; A, 4-1-07; A, 8-15-11]

19.32.2.10 MANNER AND METHOD OF TAKING FURBEARERS:

A. Legal methods of taking shall include dogs, firearms, crossbows, falconry, bows and arrows, or traps and snares [~~as further restricted below~~].

B. The following restrictions on traps and snares shall apply to the setting of any trap or snare that could reasonably be expected to catch a [~~protected~~] furbearer.

(1) [Identification of the trap user shall be such that] Each trap or snare [used in the taking of wild animals] set that could take furbearers must be either permanently marked with a user-identification number that is issued by the department of game and fish, or be permanently marked with the name and address of the trapper using the

trap or snare.

(2) No foot-hold trap with an outside spread larger than 7 inches if laminated above the jaw surfaces or [~~tooth jawed~~] tooth-jawed traps, shall be used in making a land set. All foot-hold traps with an inside jaw spread equal to or greater than 5.5 inches shall be offset unless they have padded jaws.

(3) No land set shall be placed within 1/4 mile of a designated and signed roadside rest area, picnic area or an occupied dwelling without prior, written permission of the occupant of the dwelling, except for a land set placed by a landowner on his own land.

(4) No land set shall be placed within [~~1/4~~] 1/2 mile of an established and maintained public campground, [~~roadside rest area, picnic area,~~] or boat-launching area.

(5) [~~No land set shall be placed within 25 yards of any forest service or bureau of land management system trail designated on agency maps provided for the general public or within 25 yards of the outside edge of any public road that is annually maintained with public funds as follows: when a boundary fence is present, sets must be made on the side of the fence opposite the road.] It shall be unlawful to make a land set within 25 yards of the edge of any public road or trail (including any culvert or structure located beneath it) except on private land with written permission from the landowner. Trail shall mean any path opened for public use and maintained annually by public funds or any path published on a map by a municipal, state or federal agency and open for public travel. Public road shall mean any thoroughfare that was constructed and annually maintained with public funds whether it is currently open or closed to vehicle use or any thoroughfare published on a map by a municipal, state or federal agency and open for public travel. When a fence is present within 25 yards of the edge of the road, sets may be made on the side of the fence opposite the road.~~

(6) No land set shall be placed within 50 yards of any man-made livestock or wildlife catchment, pond or tank containing water, except on private land with written permission from the landowner.

(7) No steel trap with an inside jaw spread larger than 7.5 inches or [~~conibear-type~~] body-gripping trap with a jaw spread greater than 12 inches shall be used in making a water set.

(8) [~~It shall be illegal to place, set or maintain any steel trap or snare within 25 feet of bait that is at all visible from any angle and that consist of the flesh, hide, fur, viscera, or feathers of any animal; provided, however, that a cubby set shall be legal when set where the bait cannot be seen except from a height of 3 feet or less above ground level~~

and at a maximum distance of 25 feet. The bait must be inside the natural or man-made cubby but the steel trap may be outside. Bones that are entirely free of flesh, hide, fur or feathers may be used as visible bait. The restriction on visible bait shall not apply to a trap flag that is suspended above the ground and that is made from materials other than parts of mammals, birds, fish, reptiles, or amphibians. It shall be illegal to place, set or maintain any steel trap or snare within 25 feet of bait that is visible from any angle and that consist of the flesh, hide, fur, viscera, or feathers of any animal unless used in conjunction with a cubby set where the bait cannot be seen except from a height of 3 feet or less above ground level and at a maximum distance of 25 feet. The bait must be inside the cubby but the steel trap or snare may be outside. Bones that are entirely free of flesh, hide, fur or feathers may be used as visible bait. The restriction on visible bait shall not apply to a trap flag that is suspended above the ground and that is made from materials other than animal parts.

(9) No [conibear-type] body-gripping trap with an inside jaw spread greater than [seven-(7)] 7 inches may be set on land [and must be]. Body-gripping traps with inside jaw spreads of between 6 and 7 inches set on land shall be used in conjunction with a cubby set such that the trap trigger is recessed in the cubby at least [eight-(8)] 8 inches from an entrance. [Conibear-type traps with an inside jaw spread less than six (6) inches are not required to be used in conjunction with a cubby set.]

(10) [Commencing November 1, 2010, for a minimum of six months, it shall be illegal to place, set or maintain any steel trap, conibear trap, foot-hold trap or snare anywhere on public land within the Gila or Apache national forests in New Mexico, unless otherwise allowed by statute. The prohibition shall remain in place until the state game commission takes action based upon a department study to assess the risks to Mexican gray wolves due to trapping and a determination if some methods of trapping could be allowed that pose minimal risk of injury to the Mexican gray wolf.] Shooting hours:

(a) Hunting and falconry - ½ hour before sunrise to ½ hour after sunset.

(b) Trapping - unrestricted.
[4-1-95, 19.32.2.10 NMAC - Rn, 19 NMAC 32.1.10, 9-29-00; A, 4-1-03; A, 4-1-07; A/E, 11-1-10; A, 8-15-11]

19.32.2.11 TRAP INSPECTION AND FURBEARER REMOVAL:

[A. A licensed trapper, or his/her agent, must make a visual inspection of each trap every 24 hours. If wildlife is held captive in the trap, the trapper or agent must remove the wildlife. A release device or catchpole shall be carried to release

pets and maybe used to release non-target or undesirable animals. All traps must be personally checked by the trapper every other calendar day and all wildlife removed. Each trapper will be allowed multiple agents who must possess written permission from the trapper and a valid trapper license. The permission must include the trapper's full name, address, trapper's license number, trap identification number(s), if appropriate, and general location or route of traps.

B. It shall be illegal to import any furbearer into the state. It shall be illegal to retain alive in captivity any furbearer except raccoons held under a valid New Mexico department of game and fish live animal permit. Upon written application, the director may issue a permit for retention of raccoon, or other activity permitted under Title 19.31.2 NMAC.]

A. A licensed trapper, or his/her agent, must make a visual inspection of each trap each calendar day and remove any captured wildlife. A release device or catchpole shall be carried to release captured animals. All traps must be personally checked by the trapper every other calendar day. Each trapper will be allowed multiple agents who must possess written permission from the trapper and a valid trapper license. The permission must include the trapper's full name, address, trapper's license number, trapper identification number(s), if appropriate, and general location or route of traps.

B. It shall be illegal to import any live furbearer into the state. It shall be illegal to hold any live furbearer in captivity except raccoons held under a valid New Mexico department of game and fish live animal permit. Upon written application, the director may issue a permit for retention of raccoon, or other activity permitted under 19.31.10 NMAC.

C. It shall be illegal to destroy, disturb or remove any trap, snare or trapped wildlife belonging to a licensed trapper without permission of the owner of the trap or snare, except that from March 16 to November 1, a landowner may remove any trap or snare from privately owned or leased land if such a trap or snare could endanger livestock. Nothing in this subsection shall prohibit a person from releasing any domestic animal from a trap.

[4-1-95; A, 2-28-98, A, 9-30-98; 19.32.2.11 NMAC - Rn, 19 NMAC 32.1.11, 9-29-00; A, 4-1-03; A, 4-1-07; A, 8-15-11]

19.32.2.13 AREAS CLOSED TO ~~ALL~~ FURBEARER TRAPPING:

A. [No trapping shall be permitted on] That portion of Los Alamos county bounded by a line beginning at a point on the county line common to Los Alamos and Sandoval counties, said point identified as lying 200 feet north along the

county line from the brass cap marking the 7-1/2 mile point on the east boundary of the Baca location, said brass cap having New Mexico state plane coordinates (central zone) of X = 445,992.94 and Y = 1,782,659.28; and bearing northeasterly from the point of beginning to the northwestern corner of section 6, T. 19 N., R. 6 E, NMPM; thence easterly along the township line to the northeast corner of section 3, T. 19 N., R. 6 E., NMPM; then southwesterly to the first order traverse station "pinon;" thence N. 82 degrees, 26'30" E., a distance of 107.94 feet to the Los Alamos-Santa Fe county line; thence south, west and southeast along the eastern boundary of Los Alamos county to a point marked by a brass cap monument stamped A.P. 33 and shown on the "Boundary Plat, Survey of Tract A, Ramon Vigil Grant", filed for record with the U.S. Department of the Interior, General Land Office, Washington, D.C., January 10, 1939; thence southwesterly along a line 1,000 feet easterly of and parallel with the easterly boundary of the survey of White Rock, county of Los Alamos, New Mexico, as recorded in plat book 1, Page 62, on September 3, 1965, to the center line of Water canyon; thence southeasterly along the center line of Water canyon to the Los Alamos-Santa Fe county line; thence southwesterly, westerly, and northerly along the Los Alamos county line to the point of beginning.

B. [No trapping shall be permitted on the Rio Grande wild river recreation area in Taos county.] The portion as follows of the Wild Rivers recreation area is closed to furbearer trapping - an area bounded on the north by the power line from Bear Crossing to Red River hatchery, south along the Red River to the confluence of the Rio Grande and north along the Rio Grande to the power lines at Bear Crossing.

C. No furbearer trapping shall be permitted on the Valle Vidal addition to the Carson national forest [;] and the Greenwood portion of the Vermejo ranch [; the E.S. Barker wildlife area, and the Urraca wildlife area in unit 55].

D. No furbearer trapping shall be permitted on the McGregor military range in unit 28 unless authorized by an authorized representative of the department of defense.

E. No furbearer trapping shall be allowed in the portion of game management unit 6 lying within the exterior boundaries of the Valles Caldera national preserve [(formerly known as the Baca location #1)] as described and/or posted by the U.S. forest service.

[4-1-95; 19.32.2.13 NMAC - Rn, 19 NMAC 32.1.13 & A, 9-29-2000; A, 8-15-11]

19.32.2.14 TAGGING BOBCAT PELTS:

A. Every person who takes

a bobcat in New Mexico shall present the pelt for tagging in New Mexico prior to leaving the state no later than April 14, annually. ~~[The trapper or his agent must make arrangements to have all bobcat pelts tagged no later than April 14, annually.]~~

B. Every person who presents a bobcat for tagging shall display a current trapper license except residents 11 years of age or younger. Tags may be obtained from department offices in Raton, Roswell, Las Cruces, Albuquerque and Santa Fe. In addition pelts may be tagged by New Mexico licensed furbearer dealers following policies set forth by the department.

C. No person shall transport across state lines, sell, barter, or otherwise dispose of any bobcat pelt taken in New Mexico unless it has been properly tagged.

D. It shall be unlawful to present for tagging, or to have tagged with a New Mexico tag, any pelt from a bobcat taken outside the state of New Mexico.

E. It shall be unlawful for fur dealers to tag any bobcat contrary to this rule.

[4-1-95; 19.32.2.14 NMAC - Rn, 19 NMAC 32.1.14, 9-29-00; A, 4-1-05; A, 4-1-07; A, 8-15-11]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
BEHAVIORAL HEALTH SERVICES
DIVISION**

**TITLE 7 HEALTH
CHAPTER 21 BEHAVIORAL
HEALTH
PART 1 GENERAL
PROVISIONS**

7.21.1.1 ISSUING AGENCY:
Human Services Department
[7.21.1.1 NMAC - N, 9-1-11]

7.21.1.2 SCOPE: This rule applies to the general public.
[7.21.1.2 NMAC - N, 9-1-11]

7.21.1.3 STATUTORY AUTHORITY: Subsection F of Section 9-7-6.4 NMSA 1978 requires the interagency behavioral health purchasing collaborative (the collaborative) to adopt rules through the human services department. The collaborative is created by statute and comprised of the secretaries of aging and long-term services; Indian affairs; human services; health; corrections; children, youth and families; finance and administration; workforce solutions; public education; and transportation; the directors of the administrative office of the courts; the New Mexico mortgage finance authority; the governor's commission on disability; the

developmental disabilities planning council; the vocational rehabilitation division of the public education department; the New Mexico health policy commission; and the governor's health policy coordinator, or their designees.

[7.21.1.3 NMAC - N, 9-1-11]

7.21.1.4 DURATION:
Permanent

[7.21.1.4 NMAC - N, 9-1-11]

7.21.1.5 EFFECTIVE DATE:
September 1, 2011, unless a later date is cited at the end of a section.

[7.21.1.5 NMAC - N, 9-1-11]

7.21.1.6 OBJECTIVE: The objective of this rule is to provide policies for the standard of delivery for behavioral health services through contracted behavioral health entities and for approval of contracts by the collaborative.

[7.21.1.6 NMAC - N, 9-1-11]

7.21.1.7 DEFINITIONS: This section contains the glossary for the New Mexico behavioral health system. The following definitions apply to terms used in this chapter and shall guide any rules promulgated by collaborative members regarding behavioral health.

A. Definitions beginning with letter "A":

(1) **Abuse, individual:** Any intentional, knowing or reckless act or failure to act that produces or is likely to produce physical or great mental or emotional harm, unreasonable confinement, sexual abuse or sexual assault consistent with 30- 47-1 NMSA 1978.

(2) **Abuse, provider:** Provider practices that are inconsistent with sound fiscal, business, medical or service related practices and result in an unnecessary cost to the program, or in reimbursement for services that are not medically, clinically, or psychosocially necessary or in services that fail to meet professionally recognized standards for behavioral health care.

(3) **Adult behavioral health procedures manual:** The procedures manual that includes the psychiatric rehabilitation program requirements and comprehensive community support services requirements.

(4) **Advance directive:** Written instructions such as a mental healthcare advance directive, psychiatric advance directive, living will, durable health care power of attorney, durable mental health care power of attorney, or advance health directive, relating to the provision of health care when an adult is incapacitated. (See generally, 27-7A-1 - 27-7A-18 NMSA, 1978, and 24-7B-1 - 24-7B-16 NMSA 1978.)

(5) **Adverse determination:** A determination by the SE that the behavioral health services furnished, or proposed to be furnished to a consumer, are not medically, clinically or psychosocially necessary or not appropriate.

(6) **American society of addiction medicine (ASAM):** An organization of professionals in addiction services that developed, in the early 1990s or a set of criteria and tools to identify the level of care best suited to an individual in need of addiction services.

B. Definitions beginning with letter "B":

(1) **Behavioral health (BH):** The umbrella term for mental health and substance abuse. It includes both mental health (MH) , including psychiatric illnesses and emotional disorders, and substance abuse (SA), including addictive and chemical dependency disorders, and includes co-occurring MH and SA disorders and the prevention of those disorders.

(2) **Behavioral health planning council (BHPC):** The body created to meet federal and state advisory council requirements and to provide consistent, coordinated input to the behavioral health service delivery system in New Mexico, and with which the SE will be expected to interact with as an advisory council. (See 24-1-28 NMSA, 1978)

C. Definitions beginning with letter "C":

(1) **Clinical necessity:** The determination made by a behavioral health professional exercising prudent clinical judgment as to whether a behavioral health service would promote growth and development, prevent, diagnose, detect, treat, ameliorate, or palliate the effects of a behavioral health condition, injury, or disability for the consumer.

(2) **Collaborative:** The interagency behavioral health purchasing collaborative, responsible for planning, designing and directing a statewide behavioral health system. The collaborative, established under Section 9-7-6.4 NMSA 1978, by its statutory member agencies collectively, operates under by-laws adopted by the collaborative. The collaborative may delegate to a subcommittee of the collaborative, to the collaborative chief executive officer, to a cross-agency staff team, or to a designated staff or group of staff from member agencies, except for those matters specifically required to be a decision of the collaborative itself (e.g., approving and signing the SE contract and any amendments thereto).

(3) **Collaborative members or member agencies:** The statutory and *ex officio* agency representatives who sit on the collaborative.

(4) **Comprehensive community**

support services (CCSS): CCSS is a recovery and resiliency oriented service which is provided in the community, primarily face-to-face, using natural supports to the maximum extent possible to build on client and family strengths. These services are goal-directed mental health rehabilitation services and supports for children, adolescents, and adults necessary to assist individuals in achieving recovery and resiliency goals. These services assist in the development and coordination of a consumer or member's service plan and include therapeutic interventions which address barriers that impede the development of skills necessary for independent functioning in the community. (See, 8.315.6 NMAC, 8.305.1 NMAC and collaborative adult behavioral health procedural manual.)

(5) **Consumer:** For purposes of these rules, a person with a mental health or substance use disorder receiving or eligible to receive behavioral health services through collaborative or collaborative member contracts, or a past recipient of such services.

(6) **Consumer empowerment:** Activities that address the following areas:

- (a) consumer choice
- (b) consumer voice
- (c) self-management
- (d) community integration

(7) **Continuous quality improvement (CQI):** CQI is a process for improving quality that assumes opportunities for improvement are unlimited; is customer-oriented, data driven, and results in implementation of improvements; and requires continual measurement of implemented improvements and modification of improvements, as indicated.

(8) **Core service agencies (CSAs):** Multi-service agencies that help to bridge treatment gaps in the child and adult treatment systems, promote the appropriate level of service intensity for consumers with complex behavioral health service needs, ensure that community support services are integrated into treatment, and develop the capacity for consumers to have a single point of accountability for identifying and coordinating their behavioral health, health and other social services.

(9) **Credentialing:** A systematic process whereby the SE or provider verifies and warrants that an employed, contracted or affiliated behavioral health professional or agency meets specified practice standards including education, experience, licensure and certification.

(10) **Cultural competence:** A set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables them to work effectively in cross-cultural situations, including situations of diverse culture, race, ethnicity, national origin or

disability. Cultural competency involves the integration and transformation of knowledge, information and data about individuals and groups of people into specific clinical standards, service approaches, techniques and marketing programs that match an individual's culture to increase the quality and appropriateness of behavioral health care and outcomes. *See*, 8.305.1.7 NMAC.

D. Definitions beginning with letter "D":

(1) **Delegation:** A formal process by which an SE gives another entity the authority to perform certain functions on its behalf but for which the SE retains full accountability for the delegated functions.

(2) **Designated representative:** A person designated under a valid mental health care treatment advance directive as an individual's authorized agent according to the provisions of the Mental Health Care Treatment Decisions Act (Section 24-7B NMSA 1978) and who has personal knowledge of the respondent and the facts as required in Subsection B of the Act.

E. Definitions beginning with letter "E": **EPSDT:** Early and periodic screening, diagnostic and treatment.

F. Definitions beginning with letter "F":

(1) **Family-centered care:** When a child is the consumer, the system of care reflects the importance of the family or legal guardian in the way services are planned and delivered. Family-centered care facilitates collaboration between family members and behavioral health professionals, builds on individual and family strengths and respects diversity of families.

(2) **Family specialist:** An approved provider who is certified as a family specialist through an approved State certification program. (See Subsection U of 7.20.11.7 NMAC)

G. Definitions beginning with letter "G":

(1) **Grievance (consumer):** Oral or written statement by a member expressing dissatisfaction with any aspect of the SE or its operations that is not an SE action.

(2) **Grievance (provider):** Oral or written statement by a provider to the SE expressing dissatisfaction with any aspect of the SE or its operations that is not an SE action.

H. Definitions beginning with letter "H": **HIPAA:** Health Insurance Portability and Accountability Act of 1996.

I. Definitions beginning with letter "I": **Indicated prevention:** Interventions that identify individuals who are experiencing early signs of substance abuse, mental illness and other related problem behavior and target them with special programs.

J - K [RESERVED]

L. Definitions beginning

with letter "L":

(1) **Letter of direction (LD):** Written instructions, detailed action steps, and guidelines to clarify the implementation of programs funded by new funding sources or changes to programs funded by funding sources identified in the SE contract.

(2) **Local collaborative (LC):** An advisory body, delineated by either judicial district

or tribal grouping and recognized by the collaborative, that provides input on local and regional behavioral health issues to the collaborative, the BHPC and the SE.

(3) **Logic model, prevention services:** A logical conceptual framework used to connect the prevention effort with its intended results and the goal of reducing substance abuse. The framework is based upon existing knowledge that is refined or revised with new research. The logic model specifically describes the changes expected within the target population(s), why it is likely that these changes would result from the proposed prevention services and activities, and how this logically relates to the needs assessment.

M. Definitions beginning with letter "M":

(1) **Managed care organization (MCO):** An organization that contracts with the state of New Mexico to provide a variety of health care services to individuals who are enrolled.

(2) **Management letter:** A document signed by the co-chairs of the collaborative and a representative of the SE authorized to bind the SE that describes a certain task or activity to be pursued or conducted by the SE, the specific approach to that task or activity, the expected result and the schedule to be followed to implement the task or activity. Such letters are not intended to be amendments to the SE contract, but more specific directions for completing contract requirements.

(3) **Medicaid:** The medical assistance program authorized under Title XIX and Title XXI of the Social Security Act or its successors, furnished to New Mexico residents who meet specific eligibility requirements.

(4) **Medically necessary services:** Clinical and rehabilitative physical, mental or behavioral health services that:

(a) are essential to prevent, diagnose or treat medical or behavioral health conditions or are essential to enable the consumer to attain, maintain or regain the consumer's optimal functional capacity;

(b) are delivered in the amount, duration, scope and setting that is both sufficient and effective to reasonably achieve their purposes and clinically appropriate to the specific physical, mental and behavioral health care needs of the consumer;

(c) are provided within

professionally accepted standards of practice and national guidelines; and

(d) are required to meet the physical, mental and behavioral health needs of the consumer and are not primarily for the convenience of the consumer, the provider or the SE. (Subparagraphs (a) and (b) of Paragraph (7) of Subsection M of 8.305.1.7 NMAC)

N. Definitions beginning with letter "N":

(1) **Network provider:** An individual provider, clinic, group, association or facility employed by or contracted with an SE to furnish covered behavioral health services to consumers under the provisions of the SE contract.

(2) **Non-network provider:** An individual provider, clinic, group, association or facility that provides covered services and does not have a contract with the SE.

O. [RESERVED]

P. Definitions beginning with letter "P":

(1) **Peer specialist:** An approved provider who is certified as a peer specialist through a state approved certification program. (Paragraph (4) of Subsection A of 8.315.6.10 NMAC)

(2) **Performance measures:** A system of operational and tracking indicators specified by state or federal requirements or the collaborative, including but not limited to the federal national outcome measures (NOMS).

(3) **Prevention services:** Services that follow current national standards for prevention including both physical and behavioral health.

(4) **Prevention provider:** A provider under contract for the exclusive or primary purpose of providing services designed to prevent or reduce the prevalence of substance abuse, mental illness, or other specified behavioral health disorders.

(5) **Procurement code:** Sections 13-1-28 to 13-1-199 NMSA 1978.

(6) **Psychosocial necessity:** Services or products provided to a consumer with the goal of helping that individual develop to his/her fullest capacities through learning and environmental supports and reduce the risk of the consumer developing a behavioral health disorder or an increase in the severity of behavioral health symptoms. The consumer need not have a behavioral health diagnosis but rather have a need to improve psychosocial functioning.

Q. [RESERVED]

R. Definitions beginning with letter "R":

(1) **Recovery:** Behavioral health recovery is an individual's personal journey of healing and transformation enabling a person with a behavioral health problem to live a meaningful life in a community of his

or her choice while striving to achieve his or her full potential.

(2) **Re-credentialing:** A systematic process whereby the SE verifies and warrants that an employed or affiliated behavioral health professional who is currently credentialed, continues to meet specified practice standards, including education, experience, licensure and certification.

(3) **Resiliency:** A global term describing a dynamic process, whereby people overcome adversity and go on with their lives in a productive and self-satisfying manner.

(4) **Responsible offeror:** An offeror who submits a response proposal and who has furnished, when required, information and data to prove that the offeror's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

S. Definitions beginning with letter "S":

(1) **Selective prevention:** Prevention interventions targeted at a subgroup of the general population that is determined to be at risk for sexual assault, substance abuse or mental illness.

(2) **SE contract:** The contract between the collaborative and the single statewide entity for services and responsibilities defined in the behavioral health request for proposals.

(3) **Statewide entity (SE):** The behavioral health entity or entities (BHE) selected by the state of New Mexico through the collaborative to perform all contract functions defined in the behavioral health request for proposal (RFP) or subsequent final contract. The SE is a contractor selected to provide all defined service responsibilities statewide, including medicaid behavioral health benefits. The SE is the agent of the collaborative and shall "coordinate", "braid" or "blend" the funding, human resources and service capacity available from the various state agencies so as to increase flexibility, maximize available resources and create a seamless single behavioral health service delivery system for New Mexico.

(4) **State:** The state of New Mexico, including any entity or agency of the state and including but not limited to the collaborative and member agencies.

(5) **Subcontract:** A written agreement between the SE and a third party, or between a subcontractor and another subcontractor, to provide services, and where appropriate approved by the collaborative.

(6) **Subcontractor:** A third party who contracts with the SE or an SE subcontractor for the provision of services.

(7) **Supported employment:**

Integrated work for not less than the federal minimum wage in a setting with ongoing support services for individuals with severe disabilities for whom competitive employment:

(a) has not traditionally occurred;

(b) has been interrupted or intermittent as a result of severe disability, and who,

(c) because of the nature and severity of their disabilities need intensive physical, educational, social or psychological support to perform work.

(8) **Supportive housing:** Permanent housing that is affordable to individuals with low or no incomes, is chosen by the individual, which a person retains even if their service needs change, and which is an essential ingredient to foster and support a person's journey towards recovery and resiliency.

T. [RESERVED]

U. Definitions beginning with letter "U": **Universal prevention:** Prevention interventions intended to reach the entire population or a large share of it, without regard to individual risk factors.

V-Z [RESERVED]

[7.21.1.7 NMAC - N, 9-1-11]

7.21.1.8 MISSION STATEMENT: The mission of the interagency behavioral health collaborative is to ensure quality behavioral health services are provided to medicaid and non-medicaid consumers; providers are reimbursed timely and accurately; and services promote prevention, recovery, resilience, and efficient use of available resources. This mission serves the collaborative vision to establish a single service delivery system in which consumers and family members are assisted in participating fully in the life of their communities; support of recovery and development of resiliency are expected; behavioral health is promoted; and the adverse effects of substance abuse and mental illness are prevented or reduced.
[7.21.1.8 NMAC - N, 9-1-11]

HISTORY OF 7.21.1 NMAC:
[RESERVED]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
BEHAVIORAL HEALTH SERVICES
DIVISION**

**TITLE 7 HEALTH
CHAPTER 21 BEHAVIORAL HEALTH
PART 2 STANDARDS OF DELIVERY FOR BEHAVIORAL HEALTH SERVICES**

7.21.2.1 ISSUING AGENCY:
Human Services Department
[7.21.2.1 NMAC - N, 9-1-11]

7.21.2.2 SCOPE: This rule applies to the general public.
[7.21.2.2 NMAC - N, 9-1-11]

7.21.2.3 STATUTORY AUTHORITY: Subsection F of Section 9-7-6.4 NMSA 1978 requires the interagency behavioral health purchasing collaborative (the collaborative) to adopt rules through the human services department. The collaborative is created by statute and comprised of the secretaries of aging and long-term services; Indian affairs; human services; health; corrections; children, youth and families; finance and administration; workforce solutions; public education; and transportation; the directors of the administrative office of the courts; the New Mexico mortgage finance authority; the governor's commission on disability; the developmental disabilities planning council; the vocational rehabilitation division of the public education department; the New Mexico health policy commission; and the governor's health policy coordinator, or their designees.
[7.21.2.3 NMAC - N, 9-1-11]

7.21.2.4 DURATION:
Permanent
[7.21.2.4 NMAC - N, 9-1-11]

7.21.2.5 EFFECTIVE DATE:
September 1, 2011, unless a later date is cited at the end of a section.
[7.21.2.5 NMAC - N, 9-1-11]

7.21.2.6 OBJECTIVE: The objective of this rule is to provide policies for the standard of delivery for behavioral health services through contracted behavioral health entities.
[7.21.2.6 NMAC - N, 9-1-11]

7.21.2.7 DEFINITIONS:
[RESERVED]
[See 7.21.1.7 NMAC.]

7.21.2.8 MISSION STATEMENT: The mission of the

interagency behavioral health collaborative (the collaborative) is to ensure quality behavioral health services are provided to medicaid and non-medicaid consumers; providers are reimbursed timely and accurately; data is collected, and services promote prevention, recovery, resilience, and efficient use of available resources. This mission serves the collaborative vision to establish a behavioral health service delivery system in which consumers and family members are assisted in participating fully in the life of their communities; support of recovery and development of resiliency are expected; behavioral health is promoted; and the adverse effects of substance abuse and mental illness are prevented or reduced.
[7.21.2.8 NMAC - N, 9-1-11]

7.21.2.9 QUALITY MANAGEMENT: The collaborative recognizes that strong programs of quality improvement and assurance help ensure that better care is delivered in a cost-effective manner with better outcomes for consumers and families. Under the terms of the interagency behavioral health collaborative contracts, quality assurance and management programs are incorporated into behavioral health care delivery and administrative systems.
[7.21.2.9 NMAC - N, 9-1-11]

7.21.2.10 BROAD STANDARDS:

A. Commitment to persons served: The BHE and provider shall provide or ensure that:

(1) service delivery is individually centered and family-centered, and furthers an individual's capacity for recovery and resiliency;

(2) all services are designed to enhance, promote and expand the recovery, resiliency, independence, self-sufficiency, self-esteem and quality of life of the persons served;

(3) individuals served are involved in the individual planning, decision-making, implementation and evaluation of services provided;

(4) agents under an advance directive, family members, guardians or treatment guardians, caregivers, or other persons critical to the consumer's life and well-being are involved in the individual planning, decision-making, implementation and evaluation of services provided, subject to requirements or principles of confidentiality and individual choice;

(5) the system offers a full range of appropriate behavioral health services for multi-diagnosed clients, including facilitating access to and coordinating care with appropriate medical care providers;

(6) services are based on evidence of effectiveness;

(7) services consider the individual consumer's and family's preferences;

(8) services and providers comply with Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972 (regarding education programs and activities); the Age Discrimination Act of 1975; the Rehabilitation Act of 1973; and the Americans with Disabilities Act.

B. Collaboration and system of care requirements: The BHE shall be responsible for developing a system of care that offers acceptable access and appropriate, effective care to all individuals and families served. The BHE shall coordinate and collaborate with the collaborative in the implementation of the requirements of this or other rules and the requirements of any contracts between the BHE and the collaborative. The BHE shall work with the BHPC and, upon request, with LCs to seek advice and comment during the planning, implementation, and evaluation of services. The BHE shall consult with the BHPC to identify service gaps and needs, including provider training, coaching and supervision needs and opportunities.

C. Reporting requirements: The BHE shall provide to the collaborative such reports as may be required by the BHE contract. The BHE shall verify the accuracy and completeness of data and other information in reports submitted.

D. Behavioral health data: For reporting purposes, behavioral health data shall be collected and reported as required by contract for any consumer or family member receiving any behavioral health service provided by a behavioral health practitioner, regardless of setting or location as required by the collaborative, including behavioral health licensed professionals, practicing within the BHE. The BHE shall monitor and ensure the integrity of data. Findings shall be reported to the collaborative as required by the BHE contract.

E. Emergency response requirements: The BHE shall participate in disaster behavioral health planning and emergency response with the collaborative and in a manner consistent with the protocol of described in the New Mexico department of health emergency operations plan, psychosocial annex. The BHE shall ensure that its network providers are likewise prepared to be responsive and appropriate to the specific needs of an event calling for emergency response and psychosocial support services.

F. Sexual assault: The BHE shall ensure that its providers have the capacity to provide comprehensive, confidential and sensitive services to victims of sexual assault as mandate by the Sexual Crimes and Prosecution and Treatment Act

Sections 29-11-1 through 29-11-7, NMSA 1978.

G. Advance directives:

The BHE shall have and implement policies and procedures for advance directives. The BHE shall require its providers to honor advance directives within its utilization management protocols.

H. Forensic evaluations:

The BHE shall ensure that network and non-network providers providing forensic evaluations shall assure that such evaluations shall be performed pursuant to court authority and either the *Rules of Criminal Procedure for the District Courts*, 5-602.B, NMSA 1978, or other legal authority. Each evaluation file shall have a copy of the court order from the state district court.

I. Special coordination requirements: The BHE shall ensure effective coordination with other service systems and providers. Such coordination shall include at least the following:

- (1) physical and behavioral health services;
- (2) emergency services;
- (3) pharmacy services;
- (4) transportation;
- (5) supportive housing;
- (6) SCI MCOs;
- (7) CYFD, including children in CYFD custody;
- (8) New Mexico corrections department;
- (9) court-ordered or parole board-ordered treatment;
- (10) children in tribal custody or under tribal supervision;
- (11) adolescents transitioning into the adult system;
- (12) children with IEPs;
- (13) medicaid eligibility outreach and assistance;
- (14) medicaid waiver and non-medicaid disability programs;
- (15) aging and long-term services department programs;
- (16) HIV/AIDS treatment providers;
- (17) individuals with special health care needs;
- (18) supported employment.

J. The BHE shall ensure that consumers with both a developmental disability and a mental illness, including consumers with autism spectrum disorders, receive covered services in a manner that meets their unique needs and in accordance with the specific requirements of the BHE contract.

K. The BHE shall comply with all applicable standards, procedure manuals, practice guidance, clinical protocols, orders or regulations issued by the collaborative or by collaborative member agencies or departments.

L. The BHE shall hold

subcontractors to all standards, procedure manuals, practice guidance, clinical protocols, orders or regulations issued by the collaborative or by collaborative member agencies or departments and shall monitor and assure compliance. Subcontracts of the BHE shall allow the BHE to observe or review administrative or clinical practices for contract compliance, quality management and outcomes.

[7.21.2.10 NMAC - N, 9-1-11]

7.21.2.11 STANDARDS FOR QUALITY MANAGEMENT AND IMPROVEMENT:

A. Program structure and operations: Quality management is an integrated approach that links knowledge, structure and processes together throughout a BHE's system to assess and improve quality. The BHE's quality management (QM) and improvement (QI) structures and processes shall be planned, systematic, clearly defined, and in full compliance with the BHE contract. The BHE shall comply with the provisions of 8.305.8.12 NMAC, regardless of the funding source of services. The BHE shall ensure that the QM/QI program is applied to the entire range of covered services and all major demographic population groups in accordance with the BHE contract. The BHE shall have an annual QM/QI work plan, prior approved by the collaborative, and as specified in its BHE contact with the collaborative.

B. Continuous quality improvement/total quality management: The BHE shall base its administrative operations and service delivery on principles of continuous quality improvement/total quality management (QM/QI). Such an approach shall include at least the following:

- (1) recognize that opportunities for improvement are unlimited;
- (2) ensure that the QM/QI process shall be data driven;
- (3) require the continual measurement of clinical and non-clinical effectiveness and programmatic improvements of clinical and non-clinical processes driven by such measurements;
- (4) require the re-measurement of effectiveness and continuing development and implementation of improvements as appropriate; and
- (5) rely on consumer and stakeholder input.

C. Prevention and coordination of care: The BHE shall institute QM/QI policies and procedures that emphasize and promote prevention and coordination across multiple providers and systems.

D. Consumer/family satisfaction: The BHE shall work with the collaborative in conducting the annual adult and child/family consumer satisfaction

survey based on the national mental health statistics improvement project or successor projects. If the BHE conducts any other or separate satisfaction survey, such survey, including the survey instrument and methodology, shall be prior approved by the collaborative. The BHE shall comply with requirements of 8.305.8.11 and such other requirements as the BHE contract may require.

E. Clinical practice guidelines: The BHE shall disseminate recommended practice guidelines, practice parameters, consensus statements and specific criteria for the provision of services for acute and chronic behavioral health care conditions.

(1) The BHE shall select the clinical issues to be addressed with clinical guidelines based on the needs of consumers.

(2) The clinical practice guidelines shall be evidence-based.

(3) The BHE shall comply with the provisions of 8.305.8.12 NMAC regardless of the funding source for services. The BHE shall fully comply with all specifications of the BHE contract regarding clinical practice guidelines and evidence-based practices.

[7.21.2.11 NMAC - N, 9-1-11]

7.21.2.12 PERFORMANCE MEASURES:

A. BHE shall be accountable as specified in its contract for the achievement of any performance measure targets identified by the collaborative. The BHE shall measure and track performance measures, report on such measures at intervals defined by the collaborative, and incorporate performance measures as part of its QM/QI program. Performance measures include those required by the federal government or specified by the collaborative.

B. Effectiveness of the QI program: The BHE shall evaluate the overall effectiveness of its QI program and demonstrate improvements in the quality of clinical care and non-clinical service to consumers. The BHE shall conduct data-driven evaluations of clinical practices to improve quality of care. The BHE shall demonstrate how it has influenced or changed provider practice patterns.

[7.21.2.12 NMAC - N, 9-1-11]

7.21.2.13 STANDARDS FOR UTILIZATION MANAGEMENT:

The collaborative requires appropriate utilization management (UM) standards to be implemented as well as activities to be performed so that excellent services are provided in a coordinated fashion with neither over nor under-utilization. The BHE shall manage the use of resources, maximize the effectiveness of care by evaluating clinical appropriateness, and authorize the type and volume of services through fair, consistent

and culturally competent decision-making processes while ensuring equitable access to care and a successful link between care and outcomes. The consumer's service plan or treatment plan priorities, advance directives, and prolonged service authorizations for individuals with chronic conditions shall be considered in the decision-making process.

A. Necessity requirement: The BHE shall comply with 8.305.8.13 NMAC regarding standards for utilization management. References to "medical necessity" in 8.305.8.13 NMAC shall be read as "clinical and psychosocial necessity" as defined in these rules. References to "member" in 8.305.8.13 NMAC shall be read as "consumer" and shall include the consumer's family, legal guardian, and designated representative as appropriate. All requirements in 8.305.8.13 NMAC regarding providing notice to providers shall include notice to the consumer and consumer's family, legal guardian, and designated representative as appropriate.

B. Use of qualified professionals: The BHE shall ensure the involvement of representative practicing providers, consumers and family members in the development of its UM procedures. The BHE shall evaluate network provider satisfaction with the UM process as part of its annual provider satisfaction survey.

C. Decisions: The BHE shall make available UM decision criteria to providers, consumers, their families, and the public. The BHE shall ensure that consumers have an optimal choice of providers consistent with their treatment needs and available providers.

D. Records: The BHE shall maintain records (both hard and electronic) that verify its utilization management activities and compliance with UM requirements specified in this rule and the specific contractual requirements of the BHE contract.

[7.21.2.13 NMAC - N, 9-1-11]

7.21.2.14 STANDARDS FOR CREDENTIALING AND RECREDENTIALING:

The BHE shall have and implement policies and procedures that comply with 8.305.8.14 NMAC, as well as any other applicable credentialing or recredentialing requirements from collaborative member departments and agencies, including but not limited to any federal block grant or other collaborative practice protocols, rules or other requirements.

A. Practitioner participation: The BHE shall have a process for receiving input from participating providers regarding credentialing and recredentialing of providers.

B. Credentialing application: The BHE shall use a

collaborative-approved application for network participation.

C. Evaluation of practitioner site: The BHE shall perform an initial visit to the offices of potential high volume behavioral health care providers, as determined by the BHE with approval of the collaborative.

D. Assessment of organizational providers: For organizational providers, the BHE shall confirm that the provider is in good standing with state and federal regulatory bodies and has been certified by the appropriate state certification agency, when applicable.

E. Performance evaluation: The BHE shall ensure that all providers maintain the certification and training necessary to provide the services they offer. The BHE shall utilize QM/QI data in conducting provider recredentialing, recontracting or performance evaluations.

F. Practices and programs: The BHE shall ensure that credentialing and recredentialing requirements shall recognize and promote approaches to services such as consumer- and family-run programs, Native American healing practices and programs, traditional curanderismo, and other legally acceptable programs.

[7.21.2.14 NMAC - N, 9-1-11]

7.21.2.15 RIGHTS AND RESPONSIBILITIES:

The BHE and the provider shall have a written policy, approved by the collaborative as required, that states their commitment to treating clients in a manner that respects their rights, respecting and recognizing the consumer's dignity and need for privacy. This policy shall also address the BHE and the provider's expectations with regard to clients' responsibilities. The BHE shall comply with 8.305.12 NMAC and 8.349.2 NMAC regarding grievances and appeals, regardless of funding source. The BHE shall be required to comply with NMAC 8.305.8.15 NMAC, member (consumer) bill of rights, any other collaborative member department or agency's rights' statements, and all consumer rights and responsibilities provisions of the BHE contract with the collaborative.

A. Consumer handbook: The BHE shall maintain a consumer handbook, prior approved by the collaborative, that includes but is not limited to information about consumer rights and responsibilities. The written information provided to consumers or clients of the BHE or provider shall be comprehensible, readable, easily understood and culturally sensitive.

B. Complaints or grievances:

(1) Consumers, their families

or legal guardians, and designated representatives have a right and shall have the means to voice complaints or file grievances and appeals about the care provided by the BHE or provider in its network.

(2) The BHE shall establish and maintain written policies and procedures for the filing of provider grievances and appeals.

(3) The BHE and the provider shall have written policies and procedures for the timely resolution of client or provider complaints or grievances.

(4) The BHE shall provide information specified in 42 CFR Section 438.10(g)(1) about its grievance system to all providers and subcontractors at the time they enter a contract.

(5) The BHE shall provide the collaborative regular reporting of all consumer and provider grievances, appeals, and fair hearings, and such other related data and information as specified in the BHE contract.

[7.21.2.15 NMAC - N, 9-1-11]

7.21.2.16 STANDARDS FOR CLINICAL RECORDS:

A. Standards and policies: The BHE shall require clinical records to be maintained in a format and manner that is timely, legible, current, and organized, and that permits effective and confidential consumer care and quality review. The BHE shall fully comply with all medical records, data, and confidentiality requirements of the BHE contract and any relevant state and federal law.

B. Confidentiality: The BHE shall have and implement clinical record confidentiality policies and procedures that implement the requirements of state and federal law and policy, this rule, and the BHE contract. These policies and procedures shall be consistent with confidentiality requirements in 45 CFR parts 160 and 164 for all medical records and any other health and enrollment information that identifies a particular consumer. Medical record contents shall be consistent with the utilization control required in 42 CFR Part 456, 42 CFR 431.305(b) and 45 CFR 164.530(c).

C. Evaluation and treatment or service records:

(1) To promote effective service delivery and quality review, treatment or service records shall be maintained in a manner that is current, comprehensive, detailed, organized, and legible.

(2) The BHE and the provider shall ensure that consumers and family members participate in treatment or service planning, development, and implementation and maximize consumer and family recovery and resiliency. The BHE shall ensure that consumers and family members, where appropriate, are presented with opportunities

to proactively engage and participate in the behavioral health service delivery system, with a focus on the family as a potential change agent where consistent with the consumer's preferences and wishes. [7.21.2.16 NMAC - N, 9-1-11]

7.21.2.17 STANDARDS FOR ACCESS:

A. **Ensure access:** The BHE shall ensure the accessibility and availability of behavioral health providers for each medically, clinically or psychosocially necessary service. The BHE shall comply with 8.305.8.18 NMAC, regardless of the funding source and shall comply with such geo-access standards as the collaborative may require. The BHE shall maintain and update its service access plan, which shall describe the BHE's system for consumer access to services.

B. **Array of services:** The BHE shall ensure that in each region of the state there is an array of covered services that allow consumers to be served within the least restrictive setting and in close proximity to their places of residence, with preference given to in-state providers.

C. **Appointment standards:** The BHE shall ensure that appointment standards detailed in the BHE contract are met by the provider and shall report to the collaborative on the compliance of providers in meeting appointment standards.

D. **Access to transportation services:** The BHE shall assist consumers in accessing existing transportation benefits and resources to provide transportation to covered services, including transportation to address a behavioral health issue during non-business hours and transportation related to an emergency. The BHE shall coordinate behavioral health transportation services with the consumer's respective MCO, where applicable.

E. **Cultural competency:** The BHE and provider shall provide effective services to people of all cultures, races, ethnic backgrounds, religions in a manner that respects the worth of the individual and protects the dignity of each individual regardless of the circumstances under which services are sought.

(1) The BHE shall develop, implement, evaluate, and update a cultural competency plan for itself and for all network providers to ensure that consumers and their families, including individuals with disabilities, receive covered services that are culturally and linguistically appropriate to meet their needs.

(2) The BHE shall ensure that providers have access to specific clinical standards, service approaches, techniques and marketing programs that match an

individual's culture to increase the quality and appropriateness of behavioral health care and outcomes. The BHE shall ensure compliance with 8.305.1.7 NMAC, regardless of funding source. [7.21.2.17 NMAC - N, 9-1-11]

7.21.2.18 DELEGATION:

Delegation is a process whereby the BHE gives another entity the authority to perform certain functions on its behalf. The BHE shall be fully accountable for the quality of clinical care and services provided to consumers through its delivery system. The BHE may not delegate the accountability for the quality of services provided. The BHE will be responsible for the QM/QI program and not delegate this responsibility to subcontractors. The BHE shall not assign, transfer or delegate key management functions such as utilization review/utilization management or care coordination without the explicit written approval of the collaborative. The BHE shall ensure its full compliance with all delegation requirements of the BHE contract.

[7.21.2.18 NMAC - N, 9-1-11]

HISTORY OF 7.21.2 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT BEHAVIORAL HEALTH SERVICES DIVISION

TITLE 7 HEALTH CHAPTER 21 BEHAVIORAL HEALTH PART 3 BEHAVIORAL HEALTH ENTITY CONTRACTING

7.21.3.1 ISSUING AGENCY:

Human Services Department
[7.21.3.1 NMAC - N, 9-1-11]

7.21.3.2 SCOPE: This rule applies to collaborative member agencies.
[7.21.3.2 NMAC - N, 9-1-11]

7.21.3.3 STATUTORY

AUTHORITY: Subsection F of Section 9-7-6.4 NMSA 1978 requires the interagency behavioral health purchasing collaborative (the collaborative) to adopt rules through the human services department. The collaborative is created by statute and comprised of the secretaries of aging and long-term services; Indian affairs; human services; health; corrections; children, youth and families; finance and administration; workforce solutions; public education; and transportation; the directors of the administrative office of the courts; the New Mexico mortgage finance authority; the

governor's commission on disability; the developmental disabilities planning council; the vocational rehabilitation division of the public education department; the New Mexico health policy commission; and the governor's health policy coordinator, or their designees.

[7.21.3.3 NMAC - N, 9-1-11]

7.21.3.4 DURATION:

Permanent

[7.21.3.4 NMAC - N, 9-1-11]

7.21.3.5 EFFECTIVE DATE:

September 1, 2011, unless a later date is cited at the end of a section.

[7.21.3.5 NMAC - N, 9-1-11]

7.21.3.6 OBJECTIVE:

The objective of this rule is to provide policies for the standard of delivery for behavioral health services through contracted behavioral health entities and for approval of contracts by the collaborative.

[7.21.3.6 NMAC - N, 9-1-11]

7.21.3.7 DEFINITIONS: The following definitions apply to terms used in this chapter.

A. **Behavioral health (BH):** The umbrella term for mental health and substance abuse. It includes both mental health (MH), including psychiatric illnesses and emotional disorders, and substance abuse (SA), including addictive and chemical dependency disorders, and includes co-occurring MH and SA disorders and the prevention of those disorders.

B. **Behavioral health entity (BHE):** One or more entities selected by the collaborative to provide all defined behavioral health service responsibilities, including medicaid behavioral health.

[7.21.3.7 NMAC - N, 9-1-11]

7.21.3.8 MISSION STATEMENT:

The mission of the interagency behavioral health collaborative (the collaborative) is to ensure quality behavioral health services are provided to medicaid and non-medicaid consumers; providers are reimbursed timely and accurately; and services promote prevention, recovery, resilience, and efficient use of available resources. This mission serves the collaborative vision to establish a behavioral health service delivery system in which consumers and family members are assisted in participating fully in the life of their communities; support of recovery and development of resiliency are expected; behavioral health is promoted; and the adverse effects of substance abuse and mental illness are prevented or reduced.

[7.21.3.8 NMAC - N, 9-1-11]

7.21.3.9 ELIGIBLE

BEHAVIORAL HEALTH ENTITY (BHE): The collaborative shall award a contract to one or more behavioral health entities which meets applicable requirements and standards delineated under state and federal law including Title IV of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The BHE contract shall be awarded to manage delivery of all covered behavioral health services (including medicaid and on-medicaid services), including network development and management, tracking funding and expenditures from various funding sources, conducting utilization management, ensuring coordination of services, ensuring quality management and improvement, and conducting various administrative functions.

A. Contract issuance:

The collaborative shall award a contract to a BHE pursuant to the procurement code. The collaborative must meet to review and vote to approve a final contract. Once the collaborative has approved the final contract, the co-chairs will sign the final contract. The BHE contract shall be effective after approval by the federal centers for medicare and medicaid services (CMS) or other required state or federal approving bodies.

B. Contract amendments:

The BHE contract shall not be altered, changed or amended other than by an instrument in writing executed by the contractor and the co-chairs of the collaborative and approved by a vote of the collaborative. The collaborative may vote to delegate to the collaborative co-chairs its authority to adopt an amendment. Amendments shall become effective and binding when written approvals have been obtained from any necessary state and federal agencies.

[7.21.3.9 NMAC - N, 9-1-11]

7.21.3.10 PUBLIC INPUT:

Prior to issuance of a request for proposal for a BHE contract, the collaborative shall provide multiple opportunities for public input regarding the possible scope of the request for proposals and evaluation or review considerations. At least one public input meeting will be held on legally allowable portions of a draft RFP. Public input will be accepted orally or in writing, submitted in person, by email, by mail, or by telephone within the time periods provided. Additional protocols for tribal input shall also be observed.

[7.21.3.10 NMAC - N, 9-1-11]

7.21.3.11 READINESS

REVIEW: Following full execution and prior to the effective date of the BHE

contract, the contractor shall demonstrate to the satisfaction of the collaborative that it is able to meet the requirements of the RFP. The readiness review may include, but is not limited to, desk and on-site reviews, system demonstrations, interviews with the contractor's staff and such other review of any and all requirements of the RFP as determined by the collaborative.

[7.21.3.11 NMAC - N, 9-1-11]

7.21.3.12 CONTRACT MANAGEMENT:

The collaborative or its designee shall provide collective and coordinated oversight and administrative functions to ensure BHE compliance with the terms of its contract, assuring each member agency with fiduciary responsibility for funds within the contract is involved and is able to meet its obligations to oversee state and federal funds for which it is responsible. Further, the provisions of 8.305.3.10 apply to all BHE contracts.

[7.21.3.12 NMAC - N, 9-1-11]

HISTORY OF 7.21.3 NMAC:
[RESERVED]

**NEW MEXICO
PUBLIC REGULATION
COMMISSION**

This is an amendment to 18.3.15 NMAC, Sections 2, 6, 7, and 8, effective August 15, 2011. The Part name is also amended.

PART 15 FUEL SURCHARGE FOR ~~[COMMISSION — RATE-REGULATED MOTOR CARRIERS]~~ WRECKER SERVICES PERFORMING NON-CONSENSUAL TOWS

18.3.15.2 SCOPE: This rule applies to all ~~[certificated motor carriers of persons and]~~ wrecker services performing non-consensual tows.

[18.3.15.2 NMAC - N, 5-15-08; A, 8-15-11]

18.3.15.6 OBJECTIVE: The purpose of this rule is to establish a procedure providing fair and reasonable voluntary fuel surcharges to ~~[certificated motor carriers of persons and]~~ wrecker services performing non-consensual tows.

[18.3.15.6 NMAC - N, 5-15-08; A, 8-15-11]

18.3.15.7 DEFINITIONS: In addition to the definitions in ~~[H]~~ NMSA 1978 Sections 24-10B, 65-2A-3, 65-6-2, and 18.3.1.7 NMAC, as used in this rule:

A. base year means the reference calendar year used as a base for determining the fuel price increase percentage in comparison to a current reference price;

B. EIA reference price

refers to the weekly gasoline or diesel fuel price for the Rocky mountain region, as published at the United States department of energy's official energy information administration website at <http://tonto.eia.doe.gov/oog/infogdu/gasdiesel.asp>, or such other address on which that same information may be displayed by the energy information administration in the future;

C. fuel price increase percentage is the percentage by which the current EIA weekly reference price of fuel has risen in comparison to the base year;

D. fuel surcharge program means the procedures and requirements set forth in this rule, by which ~~[certificated motor carriers of persons and]~~ wrecker services performing non-consensual tows may implement limited increases ~~[and decreases]~~ in their rates, reflecting the changing price of fuel, without a formal proceeding before the commission;

E. maximum chargeable rates are highest rates that may be charged by a motor carrier under the fuel surcharge program, pursuant to a current reference price;

F. motor carrier fuel expense percentage means the percentage derived by dividing a motor carrier's fuel expense attributable to a certificated service by the motor carrier's gross revenues derived that same certificated;

G. participating motor carrier means a motor carrier of persons which has elected to participate in the fuel surcharge program;

H. rate increase percentage is the potential percentage increase in rates available to a particular motor carrier.

[18.3.15.7 NMAC - N, 5-15-08; A, 8-15-11]

18.3.15.8 TOWING SERVICES PERFORMING NON-CONSENSUAL TOWS: Motor carriers performing non-consensual towing services ~~[which]~~ that choose to participate in the fuel surcharge program shall comply with the following adjustment formula:

A. fuel adjustment per mile = (the current EIA reference price for diesel or gasoline fuel minus ~~[\$1.45]~~ \$2.50) divided by 5, where 5 is a constant for the miles per gallon and ~~[\$1.45]~~ \$2.50 is the base cost per gallon for fuel conclusively assumed and used in this formula for wrecker vehicles;

B. fuel surcharge = fuel adjustment per mile multiplied by total distance traveled, included both loaded and unloaded miles;

C. the result of the "fuel adjustment": formula defined in this section shall be applied by participating motor carriers as an addition to ~~[, or as a subtraction from,]~~ the overall customer bill for fuel costs, as may be applicable for EIA reference

diesel or gasoline prices above ~~and below~~ \$1.45] \$2.50 per gallon;

D. the fuel adjustment shall be stated as a separate charge on the charge ticket or invoice, and shall include the surcharge amount per mile and total miles charged for fuel;

E. any EIA reference price below \$2.50 per gallon shall not require a refund on the charge ticket or invoice.

[18.3.15.8 NMAC - N, 5-15-08; A, 8-15-11]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.201 NMAC, Section 10 effective 8/15/2011.

3.2.201.10 DOCUMENTATION REQUIRED:

A. Receipts which are deductible under the Gross Receipts and Compensating Tax Act can be deducted only if documentation justifying the deduction is maintained so it can be verified upon audit.

B. The following examples illustrate the documentation requirements.

(1) Example 1: X sells tangible personal property to Y, a governmental agency. X may deduct the sale if the government purchase order is retained or a copy of the check, the check stub or voucher identifying the source of payment is retained for audit purposes.

(2) Example 2: A, a grocer, makes a cash sale to C, a cafe. C has issued the appropriate type nontaxable transaction certificate (nttc) to A. A may deduct the receipts from the sale if a sales ticket is prepared identifying the property purchased, the name of the customer and the date and amount of the transaction.

(3) Example 3: M, a motor parts store, deducts receipts for sales made over the counter to cash customers who have delivered proper nttcs. A sales ticket is prepared by M indicating the date, the amount and the items purchased. "CASH" is written in the space provided for the customer's name. If M is audited, the deduction would be disallowed; the transaction could not be related to a specific nttc.

C. A taxpayer claiming the deduction under Section 7-9-47 NMSA 1978 has the burden of proving that the sale was in fact a nontaxable sale for resale. If the sale was made to a person who was an active registered retailer or wholesaler at the time of the sale and the property purchased was of the type or types ordinarily purchased for resale by that purchaser, the presumption that the deduction of the receipts from the sale should be disallowed can be overcome during an audit or upon reconsideration. A

taxpayer claiming a deduction pursuant to Section 7-9-47 NMSA 1978 who is unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 will be allowed to submit other evidence, as specified in Subsection F of this section. Such other evidence is meant to provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate and will only be accepted if the conditions of Subsection E of Section 7-9-43 NMSA 1978 are met.

D. For purposes of Subsection C of this section, "unable to provide a nttc" means the inability to obtain a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 because:

(1) the buyer of the property is no longer engaged in business in New Mexico;

(2) the buyer was authorized by the department to execute nttcs at the time of the transaction but since then the authority to obtain or issue nttcs has been suspended by the department because the buyer is not in compliance with the department for the payment of their taxes;

(3) an act of God caused physical damage to the taxpayer's records or place of business; or

(4) there are other circumstances that reasonably justify a determination that the taxpayer is unable to provide a nttc.

E. The following are examples of when a taxpayer would be "unable to provide a nttc" as that phrase is used in Subsection C of this section:

(1) Example 1: X, a New Mexico retailer, sells tangible personal property to Y, another small retailer located in a rural part of New Mexico. Y purchases the tangible personal property with the intent of reselling it in the ordinary course of business but fails to provide X with the proper nttc to support the resale deduction. Two years later X is selected for an audit by the taxation and revenue department. At the beginning of the audit, X is given a sixty-day letter that requires X to obtain all necessary nttcs to support any deductions taken during the periods being audited. X attempts to obtain a nttc from Y, but is unable to do so because Y is no longer in business in New Mexico. If X can show that Y is no longer in business, X will be considered unable to provide a nttc within the sixty-day period.

(2) Example 2: L, a small lighting company, receives a notice that an audit is to be conducted by the department. L has been instructed to have in its possession all nttcs that support any deductions for the period in questions within sixty days. While compiling the documentation requested by the department, L realizes it does not have the proper nttc for a number of transactions with D, a retail customer. L calls D to obtain

the proper nttc but is told by D that the department will not issue nttcs to D because D has an outstanding tax liability and that it is not in compliance. Because D's ability to execute a nttc has been suspended, the department will consider L as being unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978.

F. A taxpayer who is unable to provide a nttc, as provided in Subsection D and E of this section, can provide the department with other evidence, pursuant to the requirements of this section, that will provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate. Such other evidence must include one of the following:

(1) information identifying the buyer (i.e., name, address, identification number, etc.) that can be used to verify against department records that the buyer is no longer engaged in business and that the deduction under Section 7-9-47 is appropriate;

(2) a letter sent to the buyer inquiring as to the buyer's disposition of the property purchased from the seller; the letter shall include the following information:

(a) seller's name and combined reporting system (CRS) identification number;

(b) date of invoice(s) or date of transaction(s);

(c) invoice number(s) (copies of actual invoices may be attached);

(d) copies of purchase order(s), if available;

(e) amount of purchase(s);

(f) a description of the property purchased or other identifying information; and

(g) a section completed and signed by the buyer that includes:

(i) the buyer's name, combined reporting system (CRS) identification number, and printed name;

(ii) title of the signor;

(iii) a statement as to the nature of the purchase; and

(iv) a statement of the buyer or signor indicating that the buyer sold or intends to resell the tangible personal property purchased from the seller, either by itself or in combination with other tangible personal property in the ordinary course of business; or

(3) any other documentary evidence that has been approved by the department in writing prior to any assessment of tax or a protest that has been acknowledged by the department prior to December 31, 2011.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 9/30/98; 3.2.201.10 NMAC - Rn, 3 NMAC

2.43.1.10, 5/31/01; A, 8/15/11]

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

This is an amendment to 3.2.205 NMAC,
Section 8 effective 8/15/2011.

**3.2.205.8 DELIVERY OF
THE NONTAXABLE TRANSACTION
CERTIFICATE:**

A. In order for a taxpayer to qualify for the deduction provided in Section 7-9-47 NMSA 1978 the taxpayer must meet the requirements of Section 7-9-47 NMSA 1978, which include being the recipient of a nontaxable transaction certificate (nttc) of the type specified and furnished by the department to be delivered by a buyer who resells tangible personal property in the ordinary course of business. Other evidence in lieu of an appropriate nttc may be acceptable as provided in Section 7-9-43 NMSA 1978 and 3.2.201.10 NMAC.

B. Example: X, a retail grocer, buys \$150 worth of brooms from Y. X, however, will not give Y [an] a nttc. The sale from Y to X is a taxable transaction since X did not give Y [an] a nttc. If X had presented the certificate, Y could have deducted the proceeds of the sale from Y's gross receipts.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.8 NMAC – Rn, 3 NMAC 2.47.8 & A, 5/31/01; A, 8/15/11]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2011

Volume XXII	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 18	April 29
Issue Number 9	May 2	May 16
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Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
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Issue Number 17	September 1	September 15
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Issue Number 21	November 1	November 15
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Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30