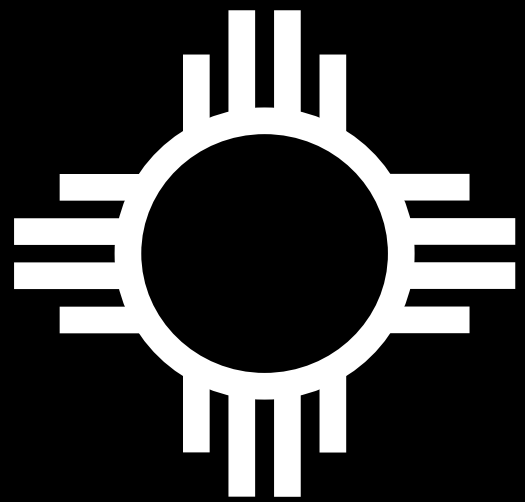


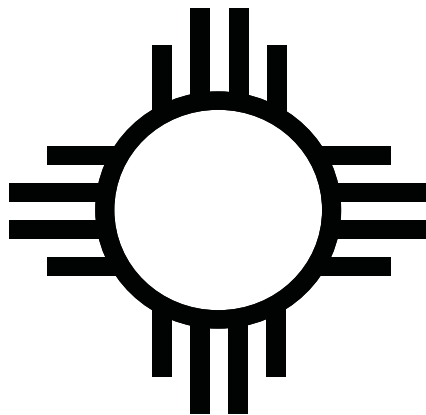
**NEW
MEXICO
REGISTER**



Volume XXIV
Issue Number 12
June 28, 2013

New Mexico Register

Volume XXIV, Issue Number 12
June 28, 2013



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

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Administrative Law Division
Santa Fe, New Mexico
2013

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New Mexico Register

Volume XXIV, Number 12

June 28, 2013

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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 introducing a new NMAC rule: Distribution of Qualified Energy Conservation Bond Allocations. Copies of the proposed rule 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 17, 2013 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 rule to Stephanie Schardin Clarke, 181 Bataan Memorial building, Santa Fe, NM 87501 by July 28, 2013.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The public hearing scheduled for July 15, 2013, regarding the Human Services Department/Medical Assistance Division proposed repeal of the following rules: 8 NMAC 4.CSM.000 *Cases Closed Wholly or in Part Due to Child Support (CSM), NMAC Identification*; 8 NMAC 4.CSM.600, *Benefit Description*; 8 NMAC 4.IAF.000, *Medicaid Coverage when Deemed Income or Resources Results in AFDC Ineligibility, NMAC Identification*; 8 NMAC 4.IAF.500, *Income and Resource Standards*; 8 NMAC 4.IAF.600, *Benefit Description*; 8 NMAC 4.ISS.000, *SSI Ineligibility Due to Deemed Income or Resources from Stepparent or Alien Sponsor, NMAC Identification*; 8 NMAC 4.ISS.400, *Recipient Policies*; 8 NMAC 4.ISS.500, *Income and Resource Standards*; 8 NMAC 4.ISS.600, *Benefit Description*; 8 NMAC 4.RMO.000, *Refugee Medical Assistance Only, NMAC Identification*; 8 NMAC 4.RMO.400, *Recipient Policies*; 8 NMAC 4.RMO.600, *Benefit Description*; 8 NMAC 4.RSD.000, *Refugee Medical Assistance Spend Down Only, NMAC Identification*; 8 NMAC 4.RSD.600, *Benefit Description*; 8 NMAC 4.TME.000, *Transitional Medicaid, NMAC Identification*; 8 NMAC 4.TME.500, *Income and Resource Standards*; and 8 NMAC 4.TME.600, *Benefit Description*. These rules were in NMAC-1 format and have been incorporated into more current rules. In addition 8.233.400 NMAC, *Medicaid Eligibility - Loss of AFDC - Income or Resources (Category 033),*

Recipient Policies; 8.259.400 NMAC, *Medicaid Eligibility - Refugees with Spend Down Provision (Category 059), Recipient Policies*; and 8.259.500 NMAC, *Income and Resource Standards* has been postponed until a future date. Public notice will be published when the new hearing date has been established.

For more information, contact Emily Floyd, at Emily.Floyd@state.nm.us or at (505) 827-3152.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The public hearing scheduled for July 16, 2013, regarding the Human Services Department/Medical Assistance Division regarding the proposed repeal and replacement to its Medicaid rules in the New Mexico Administrative Code (NMAC) for chapters 400, 500, and 600 for the following Medicaid eligibility categories: 030 Pregnant Women, 035 Pregnancy Related and Family Planning, 032 Children's Medicaid and CHIP, 072 JUL Medicaid, 027 4-month Extension Due to Increased Child and Spousal Support, 028 Transitional Medicaid, 034 Ineligible for Supplemental Security Income (SSI) Due to Alien Sponsor Deeming, 049/059 Refugee Medical Assistance and Spend-Down Refugee Medical Assistance has been postponed until a future date. Public notice will be published when the new hearing date has been established.

For more information, contact Emily Floyd, at Emily.Floyd@state.nm.us or at (505) 827-3152.

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, August 15, 2013 at 8:30 a.m. and conduct a public rule hearing on Friday, August 16, 2013 at 9:00 a.m. at the Board Office Conference Room, located at 2055 S. Pacheco Street, Building 400, Santa Fe, New Mexico 87505. The Board will reconvene after the Hearing to take action on the proposed rule. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider adopting 16.10.18 NMAC CERTIFICATIONS FOR THE USE OF MEDICAL CANNABIS.

Copies of the proposed rule are available upon request from the Board office at the address listed above, by phone (505) 476-7220, or on the Board's website at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed rule may appear in person at said time and place or may submit written comments no later than 5:00 p.m., August 5, 2013, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact Samantha Breen, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NEW MEXICO BOARD OF NURSING

Public Rules Hearing

The New Mexico Board of Nursing will hold a Rules Hearing on Friday, August 23, 2013. The Rules Hearing will begin at 9:00 a.m. The rules hearing will be held at the New Mexico Board of Nursing, 6301 Indian School RD NE, Suite 710, Albuquerque NM 87110.

The purpose of the rules hearing is to hear public testimony and comments regarding the proposed amendments to the Board's rules and regulations: 16.12 NMAC: Part 4 Hemodialysis Technician and 16.12 NMAC: Part 5 Medication Aides.

Persons desiring to present their views on the proposed amendments to the rules may download them from www.bon.state.nm.us.

In order for the Board members to review the comments prior to the hearing, persons wishing to submit written comments regarding the proposed rules should submit them to the Board office in writing no later than August 2, 2013. Persons wishing to present written comments at the hearing are asked to provide (10) copies of any comments or proposed changes for distribution to the Board and staff. In addition, persons may present their comments orally at the hearing.

Notice: Any person presenting testimony, who is representing a client, employer or group, must be registered as a lobbyist through the Secretary of State's Office 9505) 827-3600 or do so within 10 days of the Public Hearing.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, please call the Board office at (505) 841-8340 at least two weeks prior to the hearing or as soon as possible.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, July 29, 2013, from 9:00 a.m. to 1:00 p.m.. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.69.8 NMAC (TEACHER AND SCHOOL LEADER EFFECTIVENESS).

Interested individuals may provide comments at the public hearing and/or submit written comments to Ms. Mary H. Deets, Administrative Assistant, Office of General Counsel, via email at Rule.FeedBack@state.nm.us, fax (505) 827-6681, or directed to Ms. Deets at Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained from Ms. Deets by calling (505) 827-6641.

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

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an emergency amendment to 21.18.3 NMAC, Section 3 and Section 4, effective July 1, 2013.

Pursuant to NMDA Rulemaking Procedures, New Mexico Department of Agriculture, Subsection F of 21.1.1.8 NMAC, Secretary Jeff M. Witte adopts 21.18.3 NMAC with revisions noted below for the safety and general welfare of the citizens of the state of New Mexico. On March 21, 2013, Governor Martinez signed into law the New Mexico Commercial Feed Act (Senate Bill 91, as amended), which takes effect July 1, 2013, and repeals the Commercial Feed Law, 76-19-1 to 76-19-14 NMSA 1978. To continue uninterrupted regulation of the distribution and labeling of commercial feeds in the state, Secretary Witte adopts this emergency rule. New Mexico Department of Agriculture's Feed, Seed, and Fertilizer Section regulates the feed and pet food industries to keep a level playing field in the labeling and contents of a feed as well as protecting consumers by not allowing drug claims on nonmedicated feeds by ensuring feeds meet their stated guaranteed analysis and ensuring potentially harmful ingredients are not included in livestock, pet, or specialty pet foods.

21.18.3.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the ~~[New Mexico Commercial Feed Law, Chapter 76, Article 19, Sections 1 through 14, New Mexico Statutes Annotated 1978 Compilation]~~ New Mexico Commercial Feed Act, Chapter 76, Article 19A, Sections 1 through 17, New Mexico Statutes Annotated 1978 Compilation. [7/1/97; 21.18.3.3 NMAC - Rn, 21 NMAC 18.3.3, 05/29/09; A/E, 07/01/13]

21.18.3.4 DURATION: ~~[Permanent.]~~ September 30, 2013
[7/1/97; 21.18.3.4 NMAC - Rn, 21 NMAC 18.3.4, 05/29/09; A/E, 07/01/13]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.15.2 NMAC, Section 17, effective 7/1/13.

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. Upon a change of provider the client and former provider have three days after the 5th day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Hours of care shall be rounded to the nearest whole number.

F. Child care placement agreements for out of school time care shall be opened and closed concurrent with the beginning and end of summer vacations, with the exception of year round school.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age

Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$521.37	\$463.75	\$470.72	\$434.63	\$440.01	\$408.02	\$390.64	\$377.96
Licensed group homes (capacity: 7-12)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$424.01	\$400.96	\$388.93	\$381.23	\$383.08	\$375.81	\$378.53	\$368.53
Licensed family homes (capacity: 6 or less)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$410.20	\$387.60	\$370.08	\$365.04	\$369.17	\$362.09	\$364.28	\$354.64
Registered homes and in-home child care							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$278.74	\$258.00	\$264.00	\$217.69	\$242.00	\$220.00	\$242.00	\$198.00

H. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, Star level status of the provider if applicable, and in accordance with the rate established for metro or non-metro location of the provider. Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. All other providers receive the non-metro rate.

I. Providers holding national accreditation status receive an additional [~~\$132.00~~] \$150.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

J. The department pays a differential rate to providers achieving higher Star levels as follows: 3-Star at [~~\$70.00~~] \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at [~~\$104.50~~] \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at [~~\$132.00~~] \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

K. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

L. If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

M. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

N. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six to 12 month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 08/15/07; A, 06/30/10; A/E, 11/01/10; Re-pr, 12/30/10; A/E, 12/01/11; Re-pr, 12/30/11; A, 7/1/12; A, 11/30/12; A, 7/1/13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 14 DENTISTS, ADJUNCTIVE DENTAL FUNCTIONS

16.5.14.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care.
[16.5.14.1 NMAC - N, 07-17-13]

16.5.14.2 SCOPE: The provisions
of Part 14 of Chapter 5 apply to all dentists
for the administration of adjunctive dental
services.
[16.5.14.2 NMAC - N, 07-17-13]

**16.5.14.3 STATUTORY
AUTHORITY:** Part 14 of Chapter 5 is
promulgated pursuant to the Dental Health
Care Act, NMSA 1978, 61-5A-4 (1996 Repl.
Pamp.).
[16.5.14.3 NMAC - N, 07-17-13]

16.5.14.4 DURATION:
Permanent.
[16.5.14.4 NMAC - N, 07-17-13]

16.5.14.5 EFFECTIVE DATE:
07-17-13, unless a later date is cited at the
end of a section.
[16.5.14.5 NMAC - N, 07-17-13]

16.5.14.6 OBJECTIVE: To
establish guidelines for the administration
of the defined adjunctive dental services in a
dental office located in New Mexico.
[16.5.14.6 NMAC - N, 07-17-13]

16.5.14.7 DEFINITIONS:
A. "Adjunctive dental
services" means additional procedures, as
recognized by the board, used for increasing
efficiency, safety, outcome, or performance
of dental treatment, including, but not
limited to, cosmetic procedures or therapies.
B. "Botulinum toxin"
means a neurotoxin that temporarily reduces
muscle contraction.

C. "Dermal fillers" means a
resorbable substance injected below the skin
surface to reduce lines, wrinkles, or facial
grooves, and for the purpose of this rule, are
for the oral and maxillofacial regions of the
body.
[16.5.14.7 NMAC - N, 07-17-13]

**16.5.14.8 ADMINISTRATION
OF BOTULINUM NEUROTOXIN
(BOTOX) AND DERMAL FILLERS:**
The board does not issue permits for the
administration of botox or dermal fillers.

The board does not regulate dental materials
of any type; however, due to the rising
utilization of these materials by dentists, the
board sets forth the following requirements.

A. Before administering
botulinum neurotoxin or dermal fillers, in
connection with the practice of dentistry as
defined in Section 61-5A-4, a dentist must
receive satisfactory training at a dental
institution accredited by the commission on
dental accreditation (CODA) or successfully
completed a board approved continuing
education course of instruction that includes
a minimum of the following:

(1) patient assessment and
consultation for botulinum neurotoxin and
dermal fillers;

(2) indications and
contraindications for these techniques;

(3) safety and risk issues for
botulinum neurotoxin/dermal fillers
injectable therapy;

(4) proper preparation and delivery
techniques for desired outcomes;

(5) enhancing and finishing
esthetic dentistry cases with dermal fillers;

(6) botulinum neurotoxin treatment
of temporomandibular dysfunction;

(7) knowledge of adverse reactions
and management and treatment of possible
complications;

(8) patient evaluation of best
esthetic and therapeutic outcomes;

(9) integrating botulinum
neurotoxin and dermal filler therapy into
dental therapeutic and esthetic treatment
plans; and

(10) 16 hours total, including
eight hours minimum live patient hands-
on training including diagnosis, treatment
planning and proper dosing and delivery of
botox and dermal fillers;

B. Botulinum neurotoxin
and dermal fillers shall only be administered
in dental offices using universal precautions
as required by the federal centers for disease
control.

C. All dental auxiliaries
are prohibited from administering either
botulinum neurotoxin or dermal fillers.

D. Continuing education
courses shall be approved by the academy of
general dentistry (AGD) program approval
for continuing education (PACE), American
dental association (ADA) continuing
education recognition program (CERP) or
other dental or medical entities accepted by
the board.
[16.5.14.17 NMAC - N, 07-17-13]

HISTORY OF 16.5.14 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 57 MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES

16.5.57.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care.
[16.5.57.1 NMAC - N, 07-17-13]

16.5.57.2 SCOPE: This
part applies to all New Mexico dental
board licensees who hold a federal drug
enforcement administration registration.
[16.5.57.2 NMAC - N, 07-17-13]

**16.5.57.3 STATUTORY
AUTHORITY:** These rules are promulgated
pursuant to and in accordance with Section
61-5A-4 of the Dental Health Care Act
and the Pain Relief Act, Sections 24-2D-1
NMSA through 24-2D-6.
[16.5.57.3 NMAC - N, 07-17-13]

16.5.57.4 DURATION:
Permanent.
[16.5.57.4 NMAC - N, 07-17-13]

16.5.57.5 EFFECTIVE DATE:
07-17-13, unless a later date is cited at the
end of a section.
[16.5.57.5 NMAC - N, 07-17-13]

16.5.57.6 OBJECTIVE: It is the
position of the board that dentists have an
obligation to treat pain, and that a wide variety
of drugs including controlled substances may
be prescribed for that purpose. When such
controlled substances are used, they should
be prescribed in adequate doses and for the
appropriate length of time after a thorough
dental evaluation has been completed.
[16.5.57.6 NMAC - N, 07-17-13]

16.5.57.7 DEFINITIONS:
A. "Addiction" means a
neurobehavioral syndrome with genetic
and environmental influences that result
in psychological dependence on the use of
substances for their psychic effects. It is
characterized by behaviors that include one
or more of the following: impaired control
over drug use; compulsive use; continued
use despite harm; and craving.

B. "Acute pain" means the
normal, predicted physiological response to
a noxious chemical or thermal or mechanical
stimulus, typically associated with invasive
procedures, trauma or disease and is
generally time-limited.

C. "Chronic pain" means pain that persists after reasonable dental efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months "chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

D. "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

E. "Drug abuser" means a person who takes a drugs or controlled substances for other than legitimate dental purposes.

F. "Pain" means acute or chronic pain or both.

G. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

H. "Prescription monitoring program (PMP)" means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data is used to support efforts in education, research, enforcement, and abuse prevention.

I. "Therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical dental treatment that conforms substantially to accepted guidelines for pain management.

J. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.
[16.5.57.7 NMAC - N, 07-17-13]

16.5.57.8 GUIDELINES: The following regulations shall be used by the board to determine whether a dentist's prescriptive practices as consistent with the appropriate treatment of pain.

A. The treatment of pain with drugs or controlled substances is a legitimate dental practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing,

ordering, administering or dispensing or controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A dentist shall complete an evaluation. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication for or contra-indication against the use of controlled substance.

(2) A dentist shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The dentist shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The dentist shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs or controlled substances prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for controlled substances shall include indications for use.

(6) The management of patients needing chronic pain control requires monitoring by the dentist. The dentist shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. Chronic pain patients shall receive all chronic pain management prescriptions from one dentist and one pharmacy whenever possible.

(7) In addition, a dentist shall consult, when indicated by the patient's condition, with health care professionals who are experienced in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(8) If, in a dentist's opinion, a patient is seeking pain medication for reasons that are not medically justified, the dentist is not required to prescribe controlled substances for the patient.

C. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate indication for the treatment prescribed; documented change or persistence of the recognized indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the dentist's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

D. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

E. A dentist who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Dental Health Care Act or board rules.
[16.5.57.8 NMAC - N, 07-17-13]

16.5.57.9 DENTISTS TREATED WITH CONTROLLED SUBSTANCES:

Dentists who have chronic pain and are being treated with controlled substances shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on controlled substances while continuing to practice.
[16.5.57.9 NMAC - N, 07-17-13]

16.5.57.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:

The intent of requiring participation in the PMP is to assist dentists in balancing the safe use of controlled substances with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A dentist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A dentist shall before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following exists:

(1) the patient is a new patient of

the dentist, in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III and IV drugs are prescribed for a period greater than 10 days; and

(2) during the continuous use of controlled substances by established patients a PMP shall be requested a minimum of once every six months.

[16.5.57.10 NMAC - N, 07-17-13]

16.5.57.11 PAIN MANAGEMENT CONTINUING EDUCATION:

This section applies to all New Mexico dentists who hold a federal drug enforcement administration registration to prescribe controlled substances. Pursuant to the Pain Relief Act in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

A. Immediate requirements effective July 17, 2013. Between July 17, 2013 and no later than June 30, 2014, all board licensees who hold a federal drug enforcement administration registration to prescribe controlled substances shall complete no less than three continuing dental or medical education hours in appropriate courses that shall include:

(1) an understanding of the pharmacology and risks on controlled substances,

(2) a basic awareness of the problems of abuse, addiction and diversion,

(3) awareness of state and federal regulations for the prescription of controlled substances,

(4) management of the treatment of pain, and

(5) courses may also include a review of this rule (16.5.57 NMAC); the applicability of such courses toward the fulfillment of the continuing education requirement is subject to board approval; dentists who have taken continuing education hours in these educational elements between July 1, 2012 and July 17, 2013, may apply those hours toward the required three continuing education hours described in this section.

B. Triennial requirements: Beginning with the July 1, 2014 triennial renewal date, all New Mexico dentist licensees who hold a federal drug enforcement administration registration shall be required to complete and submit three continuing education hours; these hours shall count toward the 60 continuing education hours required during each triennial cycle. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing education requirement is subject to board approval. These hours may be earned at any time during the three-year period

immediately preceding the triennial renewal date. The three continuing education hours completed prior to July 1, 2014, as defined in Subsection A, may be included as part of the required continuing education hours in pain management in either the triennial cycle in which those hours are completed or the triennial cycle immediately thereafter.

C. Requirements for new licensees: All New Mexico dental licensees who hold a federal drug enforcement administration registration, whether or not the New Mexico license is the licensee's their first license, shall complete three continuing education hours in pain management during the first year of licensure. These three continuing education hours completed prior to the first renewal may be included as part of the hours required in Subsection B of this section.

D. The continuing education requirements of this section shall be included in the total continuing education requirements as set forth in 16.5.10 NMAC. [16.5.57.11 NMAC - N, 07-17-13]

16.5.57.12 NOTIFICATION: In addition to the notice of procedures set forth in the State Rules Act Chapter 14, Article 4, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 57 of the New Mexico dental board rule;

A. health care practitioner's under its jurisdiction; and

B. a health care practitioner being investigated by the board in relation to the practitioner's pain management services. [16.5.57.12 NMAC - N, 07-17-13]

HISTORY OF 16.5.57 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.1 NMAC, Sections 2, 7, 9, 15, 21, and 24 and new Sections 24 and 25, effective 07-17-13.

16.5.1.2 SCOPE: The provisions in 16.5.1 NMAC apply to all parts of Chapter 5 and provide relevant information to all licensees or certificate holders or anyone affected or interested in the licensing and regulation of dentists, dental hygienists and dental assistants. [9-30-96; 16.5.1.2 NMAC - Rn, 16 NMAC 5.1.2, 12-14-00; A, 07-17-13]

16.5.1.7 DEFINITIONS:
A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

C. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

D. "Close personal supervision" means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

E. "Consulting dentists" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

F. "CRDTS" means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

G. "Current patients of record" means the New Mexico licensed dentist has seen the patient in the practice in the last [†] 12 months.

H. "Dental hygiene-focused assessment" means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

I. "Dental record" means electronic, photographic, radiographic or manually written records.

J. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

K. "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed;

(3) evaluates and approves the procedure performed before the patient departs the care setting; and

(4) is capable of responding immediately if any emergency should arise.

L. "Ex t e n u a t i n g circumstances" are defined as a serious,

physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

M. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

N. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

O. "Indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in 61-5A-3 NMSA 1978.

P. "Jurisprudence exam" means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

Q. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

R. "NERB/ADEX" means the north east regional board of dental examiners, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

S. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978.

T. "Palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

U. "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

V. "Provider" means a provider of dental health care services, including but not limited to dentists, dental

hygienists, and dental assistants.

W. "Specialist" means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.

X. "SRTA" means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

Y. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

Z. "Supervision" means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

AA. "Teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

BB. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

CC. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05; A, 07-16-07; A, 07-17-08; A, 07-19-10; A, 01-09-12; A, 06-14-12; A, 07-17-13]

16.5.1.9 RESPONSIBILITY OF LICENSEE OR CERTIFICATE HOLDER:

A. It is the responsibility of the [~~dentist, dental hygienist or dental assistant~~] licensee or certificate holder to keep the board informed of a current mailing address. All correspondence, including

renewal forms, will be mailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of address.

B. The board must be informed of current practice address(s) for all [~~dentists and hygienists~~] licensees or certificate holders. Any change in practice address(s) must be reported to the board in writing within 30 days of the change.

[3-11-89...5-31-95; 16.5.1.9 NMAC - Rn & A, 16 NMAC 5.1.9, 12-14-00; A, 07-17-13]

16.5.1.15 GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION:

A. Approved courses and providers. The following providers and courses are approved for continuing education credits. Professional training programs used by dental assistants for certification preparation in expanded functions are considered to be "approved training programs." The credit hours for approved training programs may also be used to meet continuing education requirements such as:

(1) scientific meetings or sessions sponsored or recognized by a local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional organization;

(2) any dental related course sponsored by an institution accredited by the United States department of education;

(3) courses that are primarily in relationship to maximizing income, billing, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period;

(4) courses presented by approved study clubs as further defined in Subsection B of 16.5.1.15 NMAC;

(5) on-line and self-study as further defined in Subsection C of 16.5.1.15 NMAC;

(6) original presentation by a licensee who has submitted to the board an outline, date, place, and sponsor of the presentation; a maximum of eight hours will be allowed each triennial period in this category;

(7) any course not sponsored by a recognized provider may be approved by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters;

(8) medical education courses that are accredited by the American council for continuing medical education (ACCME) shall be limited to eight hours per triennial period;

(9) examining board credits shall be limited to 20 hours per triennial period; and

(10) a non-board or non-committee licensee volunteering for the board or committee may receive up to 10 hours of continuing education for board approved activities; including serving as a hearing officer, investigator, mentor, or monitor;

(11) participation in a board or dental hygiene committee board approved charitable event to include a post-event survey; charitable event credits shall be limited to eight hours per triennial period.

B. Approved study clubs. The board may approve study clubs which meet the following criteria:

(1) composed of not less than five licensees with elected officers, written bylaws, and regular meetings;

(2) organized for the purpose of scientific study;

(3) the approved club must keep records of continuing education information or material presented the number of hours and the members in attendance; films, cassettes, or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material.

C. Allowable on-line, webinars, or self-study.

(1) A self-study course of instruction designed to directly enhance the licensee's or certificate holder's knowledge, skill, or competence in providing care to the dental consumers.

(2) A course that includes a post study course examination must be completed and returned for grading by the course provider.

(3) The hours of credit must be listed on the certificate.

(4) A maximum of 30 credits per triennial period will be allowed in the category of on-line, webinar, or self-study.

(5) A license or certificate holder may take the board's open book jurisprudence examination, up to once a year, and be granted three hours of continuing education credit for successfully passing the exam with a score of 75% or above. There will be a \$25 fee for the exam to cover the cost of handling.

(6) Basic life support (BLS) or cardiac pulmonary resuscitation (CPR) is not allowed thru a self-study course, a hands-on course is required.

D. Credit hours.

(1) One hour of credit will be granted for every hour of contact instruction. This credit shall apply to either academic or clinical instruction. Eight hours shall be the maximum number of continuing education credits granted in a single day.

(2) Courses which are presented in institutions of higher education for the purpose of receiving a degree, advanced degree or certificate will earn the licensee or certificate holder 10 hours for every semester

credit hour assigned a course as specified in the catalogue of the institution presenting the course.

E. Courses not allowed.

Courses dealing largely with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to dental care may not be used to fulfill continuing education requirements.

F. Verification of course attendance. The following documents, or combination of documents, may be used to verify attendance/participation in the required continuing education:

(1) course certificate with the course title, content, presenter, sponsor and units/hours;

(2) pamphlet of course with same information as requested on certificate along with canceled check;

(3) course attendance sheet submitted from the sponsor;

(4) course code or statement of attendance from presenter or sponsor of licensee attendance;

(5) for out of state courses and meetings when certificates or sign-in sheets are not available, the licensee may provide a copy of the registration form, with a copy of courses in printed form which were offered, identify the ones attended, along with information regarding travel and lodging accommodations for the meeting; and

(6) licensee is responsible for maintaining records of all CEUs for one year following the renewal cycle.

[11-21-75, 5-21-93, 5-31-95; 3-11-89, 9-30-96, 12-15-97, 1-1-99; 16.5.1.15 NMAC - Rn & A, 16 NMAC 5.1.15, 12-14-00; A, 07-19-10; A, 01-09-12; A, 07-17-13]

16.5.1.21 CONSULTING SERVICES; CLAIMS REVIEW BY INSURANCE COMPANIES: A dentist who reviews insurance claims for New Mexico licensed dentists who are treating patients in New Mexico must: ~~[be a current New Mexico licensed dentist who is a resident and in good standing. All insurance claims that have been reviewed by a consultant dentist and subsequently denied or offer an alternate treatment plan must identify the consultant by their name and New Mexico license number.]~~

A. be a current New Mexico licensed dentist; and

B. within 60 days, licensee has filed a letter at the board office the name of the company the dentist will be providing consulting services to.

[16.5.1.21 NMAC - N, 06-14-12; A, 07-17-13]

16.5.1.24 RECORD KEEPING: All records of patient treatment must be

maintained for at least six years. If a dentist retires or is no longer practicing in New Mexico, the dentist must provide the following documentation to the board office:

A. actual date of retirement or date of no longer practicing in New Mexico;

B. proof of written notification to all patients currently under active treatment; and

C. the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients in the 12 previous months to the date of closing practice, the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.1.24 NMAC - N, 07-17-13]

16.5.1.25 CODE OF ETHICS:

Unless otherwise stated in the rules or statute, the board, licensees and certificate holders shall refer to the most recent version of the American dental association (ADA) code of ethics for guidance.

[16.5.1.25 NMAC - N, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.6 NMAC, Sections 8, 9 and 10, effective 07-17-13.

16.5.6.8 PREREQUISITE REQUIREMENTS FOR GENERAL PRACTICE LICENSE:

Each applicant for a license to practice dentistry by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A;

B. successfully completed the dental national board examination as defined in 61-5A-12 A;

C. passed a [WREB; CRDTS, NERB/ADEX, SRTA; or other] board approved clinical examination approved by the board; the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to [WREB, CRDTS, NERB/ADEX, or SRTA] a board accepted examining agent for examination, and

(2) results of the clinical examination must be sent directly to the board office; and

D. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office;

E. the board requires a level III background status report from a

board designated professional background service for new graduates, and a level II background status report from a board designated professional background service for an applicant who has been in practice with experience; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-14-73, 5-31-95, 9-30-96, 12-15-97; 16.5.6.8 NMAC - Rn & A, 16 NMAC 5.6.8, 06-14-01; A, 3-29-02, A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 07-17-13]

16.5.6.9 PREREQUISITE REQUIREMENTS FOR SPECIALTY LICENSE:

Each applicant for a license to practice a dental specialty by examination must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A; and

B. a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12 E in one of the following specialty areas:

- (1) dental public health,
- (2) endodontics,
- (3) oral and maxillofacial surgery,
- (4) orthodontics and dento-facial orthopedics,
- (5) oral pathology,
- (6) pediatric dentistry,
- (7) periodontology,
- (8) prosthodontics, or
- (9) other specialties approved by the American dental association;

C. successfully completed the dental national board examination as defined in 61-5A-12 A;

D. passed a [~~WREB, CRDTS, NERB/ADEX, or SRFA~~] specialty clinical examination approved by the board; the results of the exam are valid in New Mexico for a period not to exceed five years; examination results must be sent directly to the board office;

E. an applicant in any specialty defined above for which there is no [~~WREB, CRDTS, NERB/ADEX, or SRFA~~] specialty clinical examination may substitute diplomate status for the examination;

F. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office; and

G. the board requires a level II background status report from a board designated professional background service; application for this service will be included with other application materials; the

applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-16-94, 5-31-95, 12-15-97, 02-14-00; 16.5.6.9 NMAC - Rn & A, 16 NMAC 5.6.9, 06-14-01; A, 3-29-02; A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 07-17-13]

16.5.6.10 DOCUMENTATION REQUIREMENTS:

Each applicant for a license by examination must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. a copy of [~~WREB, CRDTS, NERB/ADEX, or SRFA~~] clinical examination score card or certificate from the appropriate specialty board;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental school within the past 12 months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross; or the American safety and health institute (ASHI); cannot be a self-study course;

G. the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

I. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

J. verification of licensure in all states where the applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the

office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form;

K. in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

[3-16-94, 5-31-95, 9-30-96, 12-15-97, 8-16-99; 16.5.6.10 NMAC - Rn & A, 16 NMAC 5.6.10, 06-14-01; A, 3-29-02; A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.8 NMAC, Section 8, effective 07-17-13.

16.5.8.8 PREREQUISITE REQUIREMENTS FOR LICENSURE IN GENERAL PRACTICE:

Each applicant for licensure as a general dentist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A;

B. completed 60 hours of approved continuing education during the past 36 months in compliance with 16.5.1.15 NMAC of these rules;

C. passed the dental national board examination as defined in Section 61-5A-12 A;

D. passed the jurisprudence exam with a score of at least 75 percent;

E. holds a current active license in good standing by clinical examination in another state or territory of the United States, or has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application;

F. passed a clinical examination [~~through WREB, CRDTS, NERB/ADEX, SRFA or other examination accepted~~] approved by the board;

G. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules;

H. the board requires a level II background status report from a board designated professional background

service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.
[3-16-94, 8-15-95, 9-30-96, 1-1-99, 8-16-99; 16.5.8.8 NMAC - Rn & A, 16 NMAC 5.8.8, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 01-09-12; A, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.9 NMAC, Sections 8 and 11, effective 07-17-13.

16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER: To employ and contract for dental services, a non-dentist owner shall apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board.

A. Unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico;

B. the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

C. if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

D. non-dentist owner shall notify the board in writing within 30 days of any changes in ownership;

E. non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

F. non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);

G. non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

H. non-dentist owners licensed prior to the effective date of these

rules shall be allowed to maintain their existing license(s);

I. the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

J. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

K. no person other than another New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment;

L. non-dentist owners shall maintain patient records for a minimum of six years; and

M. a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

[16.5.9.8 NMAC - N, 03-06-05; A, 07-16-07; A, 01-09-12; A, 09-14-12; A, 07-17-13]
[Subsection H of 16.5.9.8 NMAC (effective 01/09/2012) was set aside by the New Mexico Court of Appeal's decision in Pacific Dental Services, Inc. v. New Mexico Board of Dental Health Care (*In re* New Mexico Board of Dental Health Rule Hearing), case number 31,836 (June 1, 2012).]

16.5.9.11 LICENSURE PROCEDURE: Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

A. Initial license: Non-dentist owner licenses are issued for a period not to exceed three years. The licensee ~~[with renew the license]~~ shall apply for renewal on a triennial bases.

B. Posting: The license and subsequent renewal certificates shall be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

C. License: This license is non-transferable.

D. Renewal: After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are

considered expired.

(1) A completed renewal application with appropriate fees shall be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration.

E. Late renewals: Renewal applications post-marked after July 1 and prior to August 1 of the renewal year shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.
[16.5.9.11 NMAC - N, 03-06-05; A, 01-09-12; A, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.16 NMAC, Sections 7 and 10, effective 07-17-13.

16.5.16.7 DEFINITIONS:

A. "Addiction" means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. ~~[Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.]~~

B. "Chronic pain" means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. "Direct reference" means a phone number or website where names and contact information of the dentist(s) can be referenced.

~~[C.]~~ D. "Drug abuser" means a

person who takes a drug or drugs for other than legitimate medical purposes.

[D-] E. "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or damage.

[E-] E. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

[F-] G. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

[G-] H. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[9-30-96; 16.5.16.7 NMAC - Rn, 16 NMAC 5.16.7, 12-14-00; A, 01-09-12; A, 07-17-13]

16.5.16.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient's records and x-rays regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with the following advertising guidelines, no

person shall:

(a) practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

(b) practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;

(c) fail to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's [name] names(s), address and telephone number or direct reference where the [names] name of the dentist(s) can be found as defined in 16.5.16.7 NMAC;

(d) advertise a practice in a false, fraudulent or misleading manner; if the name of the practice or office contains one of the American dental association recognized specialties and only a general dentists performs that service, the advertisement, signage, or broadcast media must say "services provided by a general dentist", so as not to imply that a specialist is performing such procedures; and

(e) advertise as a specialist unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by commission on dental accreditation (CODA) in one of the specialty areas of dentistry recognized by the American dental association;

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe, dispense or administer drugs outside the scope of dental practice;

(11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual misconduct;

(13) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American dental association;

(14) the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing abusive billing practices;

(16) fraud, deceit or misrepresentation in any ~~[renewal or reinstatement]~~ application;

(17) violation of any order of the board, including any probation order;

(18) injudicious prescribing, administration, or dispensing of any drug or medicine;

(19) failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent supervision of a dental hygienist or dental assistant;

(21) cheating on an examination for licensure; or

(22) failure to comply with the terms of a signed collaborative practice agreement;

(23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care under part 17 of these rules;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;

(26) conviction of either a misdemeanor or a felony punishable by incarceration;

(27) aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient abandonment;

(29) habitually addicted as defined in NMSA 1978, Sections 61.5A-21 4 & 6 or 61.5B-3 (C) and (D) habitual or excessive use or abuse of drugs, as defined

in the Controlled Substances Act [30-31-1 NMSA 1978] or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board within 10 business days of request, its investigators or representatives with information requested by the board;

(31) failure to appear before the board when requested by the board in any disciplinary proceeding; and

(32) failure to be in compliance with the Parental Responsibility Act NMSA 1978, Section 40-5A-3 seq. [9-13-69, 10-21-70, 4-11-81, 3-9-89, 3-11-89, 10-16-92, 5-31-95, 6-4-96, 2-14-00; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12-14-00; A, 07-16-07; A, 07-19-10; A, 01-09-12; A, 06-14-12; A, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.19 NMAC, Section 8, effective 07-17-13.

16.5.19.8 PREREQUISITE REQUIREMENTS FOR LICENSE: Each applicant for licensure as a dental hygienist by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13 of the act;

B. passed the dental hygiene national board examination as defined in Section 61-5A-13 A;

C. passed [~~the WREB; CRDTS, NERB/ADEX, SRFA or other~~] a clinical examination approved by the committee and ratified by the board; the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to [~~WREB; CRDTS, NERB/ADEX or SRFA~~] a board accepted examining agent for examination, and

(2) results of the clinical examination must be sent directly to the board office; and

D. passed the jurisprudence examination with a score of at least 75 percent;

E. the committee requires a level III background status report from a board designated professional background service for new graduates, and a level II background status report from a board designated professional background service for any other applicant; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service

to initiate this service.

[3-14-73, 10-4-86, 3-7-88, 5-31-95; A, 12-15-97, A, 8-16-99; 16.5.19.8 NMAC - Rn & A, 16 NMAC 5.19.8, 12-30-02; A, 07-17-08; A, 07-19-10; A, 01-09-12; A, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.30 NMAC, Sections 7 and 10, effective 07-17-13.

16.5.30.7 DEFINITIONS:

A. "Addiction" means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. [~~Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.~~]

B. "Chronic pain" means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. "Direct reference" means a phone number or website where names and contact information of the dental hygienist(s) can be referenced.

[~~C.~~] D. "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

[~~D.~~] E. "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or and damage.

[~~E.~~] F. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

[~~F.~~] G. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

[~~G.~~] H. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[9-30-96; 16.5.30.7 NMAC - Rn, 16 NMAC 5.30.7, 12-14-00; A, 01-09-12; A, 12-15-12; A, 07-17-13]

16.5.30.10 GUIDELINES: The committee shall define the following as guidelines for disciplinary action.

A. "Gross incompetence"

or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental hygiene profession;

(2) failure to advise the patient in simple understandable terms of the treatment rendered, the expectations for success, and the responsibility the patient must assume;

(3) failure to inform dentist or patient of periodontal assessment;

(4) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(5) sexual misconduct;

(6) failure to use appropriate infection control techniques and sterilization procedures;

(7) breach of ethical standards, an inquiry into which the committee will begin by reference to the code of ethics of the American dental hygienists' association;

(8) fraud, deceit or misrepresentation in any [~~renewal or reinstatement~~] application;

(9) violation of any order of the committee, and ratified by the board, including any probation order;

(10) injudicious administration of any drug or medicine;

(11) failure to report to the committee or board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental hygiene or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(12) deliberate and willful failure to reveal, at the request of the committee, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the committee or board; and

(13) cheating on an examination for licensure;

(14) failure of a dental hygienist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent, or misleading manner, and

(b) shall include in the advertisement the name of the hygienist, the name of the employer dentist(s), the practice address(es) and telephone number(s);

(15) failure of a collaborative practice dental hygienists to refer a patient for dental care; or

(16) failure of a collaborative practice dental hygienist to comply with the terms of a signed collaborative practice agreement;

(17) failure of a collaborative practice dental hygienist to professionally and effectively communicate with a patients dentist of record, or consulting dentist, in a professional manner in regard to a shared patient's care under 16.5.17 NMAC of these rules;

(18) failure of a collaborative dental hygienist to comply with the following advertisement guidelines, no person shall:

(a) practice dental hygiene under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board;

(b) practice dental hygiene without displaying his/her full name as it appears on the license issued by the board on the ~~[outside of the]~~ entrance door of each office;

(c) shall include in all advertisements the dental hygienist's name, address and telephone number or direct reference where the name of the dental hygienist(s) can be found as defined in 16.5.30.7 NMAC; and

(d) shall not advertise a practice in a false, fraudulent or misleading manner;

(19) assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(20) conviction of either a misdemeanor or a felony punishable by incarceration;

(21) aiding and abetting a dental auxiliary who is not properly certified;

(22) patient abandonment;

(23) habitually addicted as defined in 61.5A-21 4 & 6 and 61.5B-3.(C) and (D) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 NMSA 1978] or habitual or excessive use or abuse of alcohol;

(24) failure of the licensee to furnish the committee within 10 business days of request; its investigators or representatives with information requested by the committee, and ratified by the board;

(25) failure to appear before the board when requested by the committee, and ratified by the board, in any disciplinary proceeding; and

(26) failure to be in compliance with the Parental Responsibility Act

NMSA1978, Section 40-5A-3 seq. [3-14-73, 4-10-81, 10-16-92, 5-31-95, 9-30-96, 1-1-99, 2-14-00; 16.5.30.10 NMAC - Rn & A, 16 NMAC 5.30.10 12-14-00; A, 07-19-10; A, 01-09-12; A, 12-15-12; A, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.39 NMAC, Sections 8 and 10, effective 07-17-13.

16.5.39.8 PRACTICE AND REQUIRED SUPERVISION:

Dental assistants may provide any basic supportive dental procedure, not excluded elsewhere in rule or in statute if the procedure is performed under the indirect supervision of a dentist. The following expanded function procedures may be performed without certification under indirect supervision as long as the procedure is approved by the dentist or dental hygienist upon completion:

A. rubber cup coronal polishing (not to be represented as a prophylaxis);

B. application of topical fluoride;

C. pit and fissure sealant application.

[10-21-70...9-30-96; 16.5.39.8 NMAC - Rn & A, 16 NMAC 5.39.8, 9-30-02; A, 07-17-13]

16.5.39.10 NON-ALLOWABLE PROCEDURES:

Licenses may not delegate the performance of the following procedures to auxiliary personnel:

A. removal of, or addition to, the hard or soft tissue of the oral cavity;

B. diagnosis and treatment planning;

C. final impressions for restorations or prosthetic appliances;

D. initial fitting and adaptation of prostheses;

E. final fitting, adaptation, seating and cementation of any fixed or removable dental appliance or restoration,

including but not limited to inlays, crowns, space maintainers, habit devices, anti-snoring or sleep apnea appliances or splints;

F. irrigation and medication of canals, cone try-in, reaming, filing or filling of root canals; [and]

G. other services defined as the practice of dentistry or dental hygiene in Section 61-5A-4, A, B, and C; and

H. bleaching or whitening teeth without direct or indirect supervision of a dentist.

[10-21-70...5-31-95; 9-30-96; 16.5.39.10 NMAC - Rn & A, 16 NMAC 5.39.10, 9-30-02; A, 07-17-13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.40 NMAC, Section 10, effective 07-17-13.

16.5.40.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of dental assisting;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any ~~[renewal or reinstatement]~~ application;

E. cheating on an examination for expanded function certification;

F. performing any procedure which requires certification unless so certified;

G. i n j u d i c i o u s administration of any drug or medicine;

H. conviction of either a misdemeanor or a felony punishable by incarceration; and

I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.

[10/16/92, 8/15/95, 9/30/96; 16.5.40.10 NMAC - Rn, 16 NMAC 5.40.10, 04/17/06; A, 07/16/07; A, 07/19/10; A, 06/14/12; A, 07/17/13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.42 NMAC, Sections 9 and 10, effective 07-17-13.

16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL AUXILIARY:

A. satisfactory completion of an accepted expanded function dental auxiliary course at an institution accredited by the board or joint commission on dental accreditation where in the offering program is also accredited by the commission; or

B. for dental auxiliaries that have five years experience and "independent

preparation” for the requirements:

(1) applicant must have a minimum of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(2) achieved certification in all expanded functions as defined in 16.5.33 NMAC;

(3) taken a course of study in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function and passed a post-test approved by the board verifying readiness for taking the certification examination;

(4) recommended for an EFDA certification by the supervising dentist as defined in Subsection G of 16.5.42.7 NMAC;

(5) instructors must have higher or same level of licensure or certification in respective courses they are teaching;

C. pass ~~[the WREB, CRDTS, NERB/ADEX, SRTA or other]~~ a clinical examination accepted by the board for certification of EFDA;

D. completed the jurisprudence examination with a score of at least 75 percent;

E. exemptions; an expanded function dental auxiliary who is certified to perform EFDA duties in another state or jurisdiction with requirements not less stringent than those in New Mexico may be certified based on credentials;

F. after passing a board accepted examination or being certified by credentials, EFDA candidates must complete an apprenticeship under the close personal supervision of a supervising dentist;

(1) the board will send to the EFDA candidate upon receipt of the completed application the following:

(a) permit to start apprenticeship to be displayed during apprenticeship; and

(b) affidavit form to be signed by supervising dentist at start and completion of apprenticeship;

(2) the affidavit shall state that the supervising dentist assures that the EFDA candidate is competent in the procedures allowed by an EFDA and that the supervising dentist assumes full responsibility and liability for the training and actions of the EFDA;

(3) once the permit is issued by the board office the EFDA candidate has 180 days to complete the apprenticeship; and

(4) upon completion of the apprenticeship the candidate must return the EFDA permit and the signed affidavit to the board; once the permit and signed affidavit have been received and verified by the board a certificate for EFDA may be issued.

[16.5.42.9 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13]

16.5.42.10 R E Q U I R E D

DOCUMENTATION: Each applicant for an expanded function dental auxiliary certification shall submit to the board or its agent the required fees and following documentation. Applications are valid for one year from the date of receipt by the board; after one year, the applicant shall submit to the board a new application.

A. Each application for licensure who completed an EFDA program must submit the following documentation:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) official transcripts or certification verifying successful completion of an EFDA program accredited by the commission on dental accreditation;

(3) copy of ~~[WREB, CRDTS, NERB/ADEX, SRTA or other]~~ clinical examination accepted by the board for certification as EDFA; the results of the exam are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to ~~[WREB, CRDTS, NERB/ADEX, or SRTA]~~ a board approved testing agency for examination;

(b) results of the clinical examination shall be sent directly to the board office; and

(4) affidavit letter from supervising dentists.

B. An applicant who has not graduated from an accredited expanded function dental auxiliary program can apply for certification if they meet all requirements in Subsection B, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) shall provide proof of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(3) shall have achieved certification in all expanded function as defined in 16.5.33 NMAC;

(4) shall provide proof of successful completion of courses in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function;

(5) shall provide a letter from supervising dentist recommending applicant for EFDA certification; must be on dentist letterhead;

(6) copy of ~~[WREB, CRDTS, NERB/ADEX, SRTA or other]~~ clinical examination score card or certificate; and

(7) affidavit letter from the supervising dentist of competency.

C. Certification by credentials. Applicants can apply for certification by credentials if they meet all

requirements as defined in Subsections A, C, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) verification of a current active certification in good standing from another state; and

(3) copy of ~~[WREB, CRDTS, NERB/ADEX, SRTA or other]~~ clinical examination score card or certificate; the results of the examination are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to ~~[WREB, CRDTS, NERB/ADEX or SRTA]~~ a board approved testing agency for examination, and

(b) the results of the clinical examination must be sent directly to the board office; and

(4) affidavit letter from the supervising dentist of competency.

[16.5.42.10 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.47 NMAC, Section 10, effective 07-17-13.

16.5.47.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: “unprofessional conduct” means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of expanded function dental auxiliary;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any ~~[renewal or reinstatement]~~ application;

E. cheating on an examination for expanded function dental auxiliary certification;

F. performing any procedure which requires certification unless so certified;

G. i n j u d i c i o u s administration of any drug or medicine;

H. conviction of either

a misdemeanor or a felony punishable by incarceration; and

I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq. [16.5.47.10 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.55 NMAC, Section 10, effective 07-17-13.

16.5.55.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: “unprofessional conduct” means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of community dental health coordinator;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any [renewal or reinstatement] application;

E. cheating on an examination for community dental health coordinator certification;

F. performing any procedure which requires certification unless so certified;

G. i n j u d i c i o u s administration of any drug or medicine;

H. conviction of either a misdemeanor or a felony punishable by incarceration; and

I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq. [16.5.55.10 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, Sections 6, 8, 10 and 12, effective June 28, 2013

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or “in plant training,” strengthens New Mexico’s economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program’s inception in 1972, more than 1,000 companies and over 50,000 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company’s business, the role of the newly created positions in that business, and the trainees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

A. Company eligibility: Several categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators, film digital production, and post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico[;] unless the company is considered [green; headquarter or research and development] a green industry. To be considered for JTIP, non-retail service companies must export a service remotely rather than deliver service via face to face interaction. The third category -film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion requirements, refer to “company qualifications and requirements” in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term

employment for JTIP participants.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least 90% of the county median wage to qualify in urban locations and \$10.00 per hour in rural locations. For intern positions, the company must pay at least twice the NM minimum wage per hour in urban locations and at least \$10.00 per hour in rural locations. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. An additional incentive may be offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

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

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

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

(a) A portion of trainee wages up to 75% for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training

at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses up to 75% with a cap of 5% of total funding for wages may be available.

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

(3) Companies which utilize the WorkKeys® program as part of their hiring process may be eligible for an additional 5% wage reimbursement above the standard rates.

~~(3)~~ (4) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

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

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

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

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production ~~and/or~~ and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators, film digital production companies such as animation and video game production, and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is also not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service remotely rather than provide the service directly to a customer via face to face interaction. Companies that derive their revenues from within New Mexico or via face-to-face customer interaction at the company site or customer site are only eligible if they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Corporate, international, national, regional and divisional headquarters located in New Mexico may qualify for JTIP provided at least 50% of the company's revenues are derived from operations outside New Mexico. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new

revenues and new jobs into the state through contracts which support national or multi-state entities. Major United States research labs or companies which operate major United States research and development national laboratories are not eligible. JTIP will not consider contractors which rely on income that is already in the state of New Mexico eg., through national laboratories already existing in New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, collections or telemarketing are not eligible for JTIP funds. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they communicate information provided to them by their clients. For contract-based call centers, the positions must meet or exceed at least 90% of the county median to qualify in urban locations and pay at least \$10.00 per hour in rural areas. Another category of non-retail business service providers is shared services centers that solely serve regional or national divisions. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the north American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production ~~and/or~~ and able to deliver service per criteria and procedures as

set forth by and at the discretion of the JTIP board. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the two prior years. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels. A company may be allowed to exclude JTIP intern positions when calculating the two-year average headcount.

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

(4) Companies are required to submit three years of financial statements (profit and loss, [and] balance sheets, statements of cash flow, and financing term sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials must submit financials for the period for which they are available, tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, or pro forma financial statements which would substantiate their business expansion. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production [and/or] and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin

must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

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

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

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

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

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

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

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Farmington, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions

may only include professional support, not executive positions.

(5) Intern positions may be eligible provided the trainee is enrolled in a post-secondary training or academic program and meets JTIP eligibility requirements. Intern positions may be part-time (20-40 hours per week). The intern position must be relevant to the post-secondary training or academic program in which the trainee is enrolled. Companies will be reimbursed upon evidence of direct full-time employment offered and accepted within 90 days of completion of the internship and graduation from the post secondary training or education program.

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

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have been previously employed by or have worked as contractors to the company are not eligible to be hired under JTIP in the same or similar position as the one previously occupied or contracted. Individuals who have been employed temporarily in a position classified as intern in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

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

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

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

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

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

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position

in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee’s training.

- (8) Trainees’ start dates must occur after the actual contract date.
- (9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.
 - (a) The trainee must be hired by the company as a regular/permanent full-time employee before the end of the JTIP contract period.
 - (b) The trainee must receive the same wages and major medical benefits while working as a temporary employee that permanent employees of the company receive.
 - (c) The staffing agency must disclose wages paid to the temporary employee to the company.
 - (d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.
 - (e) Companies are reimbursed for wages as each trainee completes the approved training hours and after s/he has been converted to a regular/permanent full-time employee of the JTIP contracted company.
- (10) Companies are reimbursed for wages as each trainee completes the approved training hours.
- (11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP

- (1) A percentage of trainee wages for up to six months of initial training.
- (2) A percentage of travel expenses associated with training.
- (3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.
- (4) A percentage of intern wages at a minimum of twice the NM minimum wage per hour in urban locations and a minimum of \$10.00 per hour in rural locations, and a cap of \$5,000 per intern.

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

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

D. Wage reimbursement:

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

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

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	160	9.00	8.00	20	4
1a	Little or no preparation needed	Below 4.0	320	10.00	8.50	40	8
2	Some preparation needed	4.0 to < 6.0	480	11.50	9.00	60	12
2a	Some preparation needed	4.0 to < 6.0	640	13.00	9.50	80	16
3	Medium preparation needed	6.0 to < 7.0	800	14.50	11.00	100	20
3a	Medium preparation needed	6.0 to < 7.0	960	16.00	12.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	19.00	13.00	130	26
	Align with HWJTC	Additional 5%	1040	19.25	13.50	130	26

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

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

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

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at up to 50% for all eligible training hours. Urban communities are: Albuquerque (545,852), Farmington (45,877), Las Cruces (97,618), Rio Rancho (87,521), Roswell (48,366), and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to 75% for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to 75% reimbursement. To receive up to 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions

such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to 75% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit may be eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area. Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Companies that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional 5% reimbursement.

(7) (8) Additional guidelines for wage reimbursement:

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

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

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

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

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

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

F. Travel cost and reimbursement for trainees and trainers: Trainee travel may be included in the proposal when trainees are required to travel to a different location for training. Travel

expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel deemed reasonable and necessary will be consistent with the rates as designated by location. Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013]

5.5.50.12 PROCEDURAL OVERVIEW:

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

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

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

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

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

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

F. Eligible job openings must be registered with the New Mexico [department—of—workforce—solutions] workforce connection. The company is also encouraged to advertise through the

placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is available from the New Mexico higher education department (<http://hed.state.nm.us>).

G. The company must hire trainees within four months of the contract start date. The JTIP staff may extend the hiring period up to six months from the contract start date. This timing ensures that trainees who are eligible for six months of training will complete the program before the contract end date.

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

I. Claims for reimbursement should be submitted as participants complete training.

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

K. The company must arrange for [a final audit by an independent accounting firm registered with the New Mexico regulation and licensing department, board of accountancy.] an agreed upon procedure in accordance with generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training. The [final audit] agreed upon procedure requirement does not apply to contracts for custom training at New Mexico higher educational institutions. These institutions must meet all other program requirements and are subject to a compliance [audit] review by JTIP staff.

L. The final claim for reimbursement should be submitted with the completed [final audit] agreed upon procedures report. The final wage claim will be paid once the [final audit] agreed upon procedures report has been received and approved favorably.

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

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

[5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2010; A, 06-30-2011; A, 06-28-2013]

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.5 NMAC, Section 16, effective June 28, 2013.

2.82.5.16 TERMINATION OF PLAN; ACCRUED RIGHTS OF MEMBERS:

The rights of members to benefits accrued, to the extent funded, will become vested to the extent required by and upon the events set forth in Treas. Reg. Section 1.401-6(a)(1). See 26 CFR 1.401-6. [2.82.5.16 NMAC - N, 6-28-13]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

Repeal Language

The Oil Conservation Commission repeals its rule entitled Pits, Closed-Loop Systems, Below-Grade Tanks and Sumps, 19.15.17 NMAC (filed 5/30/2008) and replaces it with 19.15.17 NMAC entitled Pits, Closed-Loop Systems, Below-Grade Tanks, effective 6/26/2013.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 15 OIL AND GAS PART 17 PITS, CLOSED- LOOP SYSTEMS, BELOW-GRADE TANKS AND SUMPS

19.15.17.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division. [19.15.17.1 NMAC - Rp, 19.15.17.1 NMAC, 6/28/13]

19.15.17.2 SCOPE: 19.15.17 NMAC applies to persons engaged in oil and gas development and production within New Mexico. [19.15.17.2 NMAC - Rp, 19.15.17.2 NMAC, 6/28/13]

19.15.17.3 S T A T U T O R Y AUTHORITY: 19.15.17 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12. [19.15.17.3 NMAC - Rp, 19.15.17.3 NMAC, 6/28/13]

19.15.17.4 D U R A T I O N : Permanent.

[19.15.17.4 NMAC - Rp, 19.15.17.4 NMAC, 6/28/13]

19.15.17.5 EFFECTIVE DATE: June 28, 2013, unless a later date is cited at the end of a section.

[19.15.17.5 NMAC - Rp, 19.15.17.5 NMAC, 6/28/13]

19.15.17.6 OBJECTIVE: To regulate pits, closed-loop systems, and below-grade tanks and sumps used in connection with oil and gas operations for the protection of fresh water, public health and the environment.

[19.15.17.6 NMAC - Rp, 19.15.17.6 NMAC, 6/28/13]

19.15.17.7 DEFINITIONS:
A. "Alluvium" means detrital material that water or other erosional forces have transported and deposited at points along a watercourse's flood plain. It typically is composed of sands, silts and gravels; exhibits high porosity and permeability; and generally carries fresh water.

B. "Below-grade tank" means a vessel with greater than a five barrel capacity, excluding sumps and pressurized pipeline drip traps, installed within an excavation or buried below the surrounding ground surface's elevation. Below-grade tank does not include an above-ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

C. "Closed-loop system" means a system that uses above ground steel tanks for the management of drilling fluids.

D. "Continuously flowing watercourse" means a river, stream or creek that is named or delineated by a solid blue line on a USGS quadrangle map having a scale factor of 1:24,000, or an irrigation channel, or a water course that typically has water flowing during the majority of the days of the year. This does not include ephemeral washes, arroyos, and similar depressions that do not have flowing water during the majority of the days of the year.

E. "Division-approved facility" means a division-permitted surface waste management or injection facility, a facility permitted pursuant to 20.6.2 NMAC, a facility approved pursuant to 19.15.35.8 NMAC or other facility that the division specifically approves for the particular purpose. The division shall not approve any facility not otherwise permitted unless it finds that the facility's use for the specified purpose will protect fresh water, public health and the environment and comply with other applicable federal or state statutes, federal regulations, state rules and local ordinances.

F. "Emergency pit" means

a pit that is constructed during an emergency to contain a spill in the event of a release.

G. "Exception" means authorization from the division's Santa Fe office to depart from the requirements of 19.15.17 NMAC.

H. "Floodplain" means US army corps of engineers or FEMA documented 100-year floodplain.

I. "Life-form ratio" means the relative percentage of regionally native plant species in each of the following classifications: shrubs, forbs, and grasses.

J. "Low chloride fluids" means water-based fluids that contain less than 15,000 mg/liter of chlorides as determined by field or laboratory analysis.

K. "Measureable" means a layer of oil, the thickness of which is discernible by color cutting or other acceptable method.

L. "Multi-well fluid management pit" means a pit used for the storage, treatment and recycling of stimulation fluids and flow-back water during the drilling and completion of multiple wells. Multi-well fluid management pits may not be used for the disposal of drilling, completion or other waste. Multi-well fluid management pits may be located either onsite or offsite of a well drilling location and may remain in use until all wells with approved application for permit to drill that are identified in the pit permit are completed. Any addition of wells or extensions for permits to drill identified in the pit permit shall go to hearing. Any containment structure such as a pond, pit, or other impoundment that holds only fresh water that has not been treated for oil field purposes, is not a multi-well fluid management pit.

M. "Onsite" means within the boundaries of a single lease where exploration and production waste is generated.

N. "Permanent pit" means a pit used for collection, retention or storage of produced water or brine that is constructed with the conditions and for the duration provided in its permit, and is not a temporary pit.

O. "Restore" means to return a site to its former condition, in the manner and to the extent required by applicable provisions of 19.15.17 NMAC.

P. "Significant watercourse" means a watercourse with a defined bed and bank either named or identified by a dashed blue line on a USGS 7.5 minute quadrangle map or the next lower order tributary with a defined bed and bank of such watercourse.

Q. "Sump" means a subgrade impermeable vessel that is partially buried in the ground, is in contact with the ground surface, or is a collection device incorporated within a secondary containment

system, which remains predominantly empty, serves as a drain or receptacle for de minimis releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or wastes. Buckets, pails, drip pans or similar vessels that are not in contact with the ground surface are not sumps.

R. "Temporary pit" means a pit, including a drilling or workover pit, which is constructed with the intent that the pit will hold liquids and mineral solids. Temporary pits may be used for one or more wells and must be located at one of the associated permitted well drilling locations. Temporary pits must be closed within six months from the date the operator releases the drilling or workover rig from the first well using the pit. Any containment structure such as a pond, pit, or other impoundment that holds only fresh water that has not been treated for oil field purposes, is not a temporary pit.

S. "Variance" means authorization from the appropriate division district office to depart from the requirements of 19.15.17 NMAC. A variance may not be obtained where exceptions are required by a provision of 19.15.17 NMAC.

T. "Visible" when used with respect to oil on the surface of a pit means any amount of oil whether measurable or a sheen on the pit's liquid surface. [19.15.17.7 NMAC - Rp, 19.15.17.7 NMAC, 6/28/13]

19.15.17.8 PERMIT OR REGISTRATION REQUIRED:

A. A person shall not construct or use a pit except in accordance with a division-issued permit. Only an operator may apply for a division-issued permit. After June 16, 2008, an unlined pit is prohibited and the division shall not issue a permit for an unlined pit.

B. The division may issue a single permit for all pits or division-approved alternative methods associated with a single application for permit to drill.

C. All below-grade tanks installed after June 28, 2013 must be registered with the appropriate division district office. The operator shall file a single registration for all below-grade tanks associated with a single application for permit to drill.

D. Closed-loop systems and sumps do not require a division-issued permit or registration with the division's district office. [19.15.17.8 NMAC - Rp, 19.15.17.8 NMAC, 6/28/13]

19.15.17.9 PERMIT APPLICATION AND REGISTRATION:

A. An operator shall use the appropriate form C-144 to apply to the division for a permit to construct or use a pit

or proposed alternative method, or to register a below-grade tank. The operator shall submit the form C-144 either separately or as an attachment to a permit application for a facility with which the pit, below-grade tank or proposed alternative method will be associated. An operator shall use a C-101, C-103 or applicable bureau of land management form to notify the appropriate division district office of construction or use of a closed-loop system.

B. The permit application shall include a detailed plan as follows.

(1) Permanent pits. A registered professional engineer shall certify engineering, design and construction specifications as contained in the plan for permanent pits. The plan shall include:

(a) a quality control/quality assurance construction and installation plan;

(b) operating and maintenance procedures;

(c) a closure plan;

(d) a hydrogeologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the division's Santa Fe office to evaluate the actual and potential effects on soils, surface water and ground water;

(e) detailed information on dike protection and structural integrity; and leak detection, including an adequate fluid collection and removal system;

(f) liner specifications and compatibility;

(g) freeboard and overtopping prevention;

(h) prevention of nuisance or hazardous odors, including H₂S;

(i) an emergency response plan, unless the permanent pit is part of a facility that has an integrated contingency plan;

(j) type of oil field waste stream;

(k) climatological factors, including freeze-thaw cycles;

(l) a monitoring and inspection plan;

(m) erosion control; and

(n) other pertinent information the environmental bureau in the division's Santa Fe office requests.

(2) Temporary pits. The plan for design and construction of a temporary pit shall follow applicable liner manufacturers' requirements. The permit application also shall include operating and maintenance procedures, a closure plan and hydrogeologic data that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate compliance with the siting criteria of 19.15.17.10 NMAC. In the absence of site-specific ground water data, the operator can provide a reasonable determination of probable

ground water depth using data generated by models, cathodic well lithology, published information or other tools as approved by the appropriate division district office. The plan for a temporary pit may incorporate by reference a standard design for multiple temporary pits that the operator files with the application or has previously filed with the appropriate division district office. The operator may utilize, with approval by the appropriate division district office, standardized plans for pit construction, pit closure, and other plans which will remain approved until a subsequent plan is either required by the appropriate division district office or is submitted by the operator and approved by the appropriate division district office. A copy of the approved standardized plan shall be included in the division's electronic well file for each associated well.

(3) Below-grade tanks. The registration of a below-grade tank shall include operating and maintenance procedures, a closure plan and a hydrogeologic report that demonstrates compliance with the siting criteria of 19.15.17.10 NMAC. In the absence of site-specific ground water data, the operator can provide a reasonable determination of probable ground water depth using data generated by models, cathodic well lithology, published information or other tools as approved by the appropriate division district office. The registration of a below-grade tank may incorporate by reference a standard design for multiple below-grade tanks that the operator files with the application or has previously filed with the appropriate division district office. The operator may utilize, with approval by the appropriate division district office, standardized plans for below-grade tank construction, and other plans which will remain approved until a subsequent plan is either required by the appropriate division district office or is submitted by the operator and approved by the appropriate division district office. A copy of the approved standardized plan shall be included in the division's electronic well file for each associated well.

(4) Multi-well fluid management pits. The design and construction plan for a multi-well fluid management pit shall follow applicable liner manufacturers' requirements. The permit application also shall include operating and maintenance procedures, a list of wells with approved application for permit to drill associated with the pit, a closure plan and hydrogeologic data that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate compliance with the siting criteria of 19.15.17.10 NMAC. In the absence of site-specific ground water data, the operator can provide a reasonable

determination of probable ground water depth using data generated by models, cathodic well lithology, published information or other tools as approved by the appropriate division district office. The plan for a multi-well fluid management pit may incorporate by reference a standard design for multiple fluid management pits that the operator files with the application or has previously filed with the appropriate division district office. The operator may utilize, with approval by the appropriate division district office, standardized plans for pit construction, pit closure, and other plans which will remain approved until a subsequent plan is either required by the appropriate division district office or is submitted by the operator and approved by the appropriate division district office.

C. Filing of permit application.

(1) Permanent pits: An operator shall file an application on form C-144, including required attachments, with the division's Santa Fe office to request approval to use or construct a permanent pit and shall provide a copy to the appropriate division district office.

(2) Temporary pits, and multi-well fluid management pits. An operator shall file an application on form C-144, including required attachments, with the appropriate division district office. If the operator plans to use a temporary pit, or multi-well fluid management pit, the operator shall provide the proposed pit location on form C-102.

[19.15.17.9 NMAC - Rp, 19.15.17.9 NMAC, 6/28/13]

19.15.17.10 S I T I N G REQUIREMENTS:

A. Except as otherwise provided in 19.15.17 NMAC.

(1) An operator shall not locate a temporary pit containing low chloride fluid:

(a) where ground water is less than 25 feet below the bottom of the pit; a variance may be granted for a pit used solely to cavitate a coal bed methane well and where the operator demonstrated that the proposed operation will protect groundwater during the temporary pit's use;

(b) within (i) 100 feet of any continuously flowing watercourse or any other significant watercourse, or (ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within (i) 200 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or (ii) 300 feet of any other fresh water well or spring, in

existence at the time of the initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 100 feet of a wetland;

(g) within the area overlying a subsurface mine, unless a variance is granted that approves the proposed location based upon the operator's demonstration that the temporary pit's construction and use will not compromise the subsurface integrity;

(h) within an unstable area, unless a variance is granted upon a demonstration that the operator has incorporated engineering measures into the design to ensure that the temporary pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(2) Unless a variance is specifically provided for in Paragraph (1) of Subsection A of 19.15.17.10 NMAC, an operator must obtain an exception to locate a temporary pit containing low chloride fluids inside setbacks set forth in Paragraph (1) of Subsection A of 19.15.17.10 NMAC.

(3) An operator shall not locate a temporary pit containing fluids that are not low chloride fluids:

(a) where ground water is less than 50 feet below the bottom of the pit; a variance may be granted for a pit used solely to cavitate a coal bed methane well and where the operator demonstrated that the proposed operation will protect groundwater during the temporary pit's use;

(b) within (i) 300 feet of any continuously flowing watercourse or any other significant watercourse or (ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within (i) 500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or (ii) 1,000 feet of any other fresh water well or spring, in existence at the time of the initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 300 feet of a wetland;

(g) within the area overlying a subsurface mine, unless a variance is granted that approves the proposed location based upon the operator's demonstration that

the temporary pit's construction and use will not compromise the subsurface integrity;

(h) within an unstable area, unless a variance is granted upon a demonstration that the operator has incorporated engineering measures into the design to ensure that the temporary pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(4) An operator must obtain a variance to locate a temporary pit containing non-low chloride fluids inside setbacks set forth in Paragraph (3) of Subsection A of 19.15.17.10 NMAC. The operator must obtain an exception to locate a non-low chloride fluids temporary pit inside setbacks set forth in Paragraph (1) of Subsection A of 19.15.17.10 NMAC.

(5) An operator shall not locate a permanent pit or multi-well fluid management pit:

(a) where ground water is less than 50 feet below the bottom of the permanent pit;

(b) within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the division's Santa Fe office approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(c) within 1000 feet from a permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within 500 feet of a spring or a fresh water well used for domestic or stock watering purposes, in existence at the time of initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 500 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the operator obtains an exception and demonstrates that the pit's construction and use will not compromise subsurface integrity;

(h) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(6) An operator must obtain an exception to locate a permanent pit or multi-well fluid management pit inside setbacks set forth in Paragraph (5) of Subsection A of 19.15.17.10 NMAC.

(7) An operator shall not locate material excavated from a pit's construction:

(a) within 100 feet of a continuously flowing watercourse or a significant watercourse;

(b) 200 feet from a lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 100 feet of a wetland; or

(d) within a 100-year floodplain.

(8) An operator shall not locate a below-grade tank:

(a) within 100 feet of a continuously flowing watercourse, significant watercourse, lakebed, sinkhole, wetland or playa lake (measured from the ordinary high-water mark);

(b) within 200 feet of a spring or a fresh water well used for public or livestock consumption;

(c) where depth to ground water is less than 25 feet below the bottom of the tank.

B. An emergency pit is exempt from the siting criteria of 19.15.17 NMAC.

C. Closure for burial trenches and in place closure.

(1) An operator shall not implement trench or in-place closure:

(a) where ground water is less than 25 feet below the bottom of the buried waste;

(b) within 100 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within 300 feet of a spring or private, domestic fresh water well used for domestic or stock watering purposes;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 300 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the division specifically approves the proposed location based upon the operator's demonstration that subsurface integrity will not be compromised;

(h) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the onsite closure method will prevent contamination of fresh water and protect public health and the environment; or

(i) within a 100 year floodplain.

(2) An operator must obtain a variance to locate a burial trench inside setbacks set forth in Paragraph (3) of

Subsection A of 19.15.17.10 NMAC. The operator must obtain an exception to locate a burial trench inside setbacks set forth in Paragraph (1) of Subsection A of 19.15.17.10 NMAC.

[19.15.17.10 NMAC - Rp, 19.15.17.10 NMAC, 6/28/13]

19.15.17.11 DESIGN AND CONSTRUCTION SPECIFICATIONS:

A. General specifications.

An operator shall design and construct a pit, closed-loop system, below-grade tank or sump to contain liquids and solids; prevent contamination of fresh water; and protect public health and the environment.

B. Stockpiling of topsoil.

Prior to constructing a pit, except a pit constructed in an emergency, the operator shall strip and stockpile the topsoil for use as the final cover or fill at the time of closure.

C. Signs.

The operator shall post an upright sign not less than 12 inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the pit or below-grade tank, unless the pit or below-grade tank is located on a site where there is an existing well, signed in compliance with 19.15.16.8 NMAC, that is operated by the same operator. The operator shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the operator's name; the location of the site by quarter-quarter or unit letter, section, township and range; and emergency telephone numbers.

D. Fencing.

(1) The operator shall fence or enclose a pit or below-grade tank in a manner that deters unauthorized access and shall maintain the fences in good repair. Fences are not required if there is an adequate surrounding perimeter fence that prevents unauthorized access to the well site or facility, including the pit or below-grade tank. During drilling or workover operations, the operator is not required to fence the edge of the pit adjacent to the drilling or workover rig.

(2) The operator shall fence or enclose a pit located within 1000 feet of an occupied permanent residence, school, hospital, institution or church with a chain link security fence, at least six feet in height with at least two strands of barbed wire at the top. The operator shall ensure that all gates associated with the fence are closed and locked when responsible personnel are not onsite. During drilling or workover operations, the operator is not required to fence the edge of the temporary pit adjacent to the drilling or workover rig.

(3) The operator shall fence any other pit or below-grade tank to exclude livestock with a four foot fence that has

at least four strands of barbed wire evenly spaced in the interval between one foot and four feet above ground level.

E. Netting. The operator shall ensure that a permanent pit, a multi-well fluid management pit, or an open top tank is screened, netted or otherwise rendered non-hazardous to wildlife, including migratory birds. Where netting or screening is not feasible, the operator shall on a monthly basis inspect for, and within 30 days of discovery, report discovery of dead migratory birds or other wildlife to the appropriate wildlife agency and to the appropriate division district office in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring.

F. Temporary pits. The operator shall design and construct a temporary pit in accordance with the following requirements.

(1) The operator shall design and construct a temporary pit to ensure the confinement of liquids to prevent releases.

(2) A temporary pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a temporary pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the temporary pit in a safe manner to prevent contamination of fresh water and protect public health and the environment.

(3) The operator shall design and construct a temporary pit with a geomembrane liner. The geomembrane liner shall consist of 20- mil string reinforced LLDPE or equivalent liner material that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 Method 9090A.

(4) The operator shall minimize liner seams and orient them up and down, not across, a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall field weld and test liner seams.

(5) Construction shall avoid excessive stress-strain on the liner.

(6) Geotextile is required under the liner where needed to reduce localized

stress-strain or protuberances that may otherwise compromise the liner's integrity.

(7) The operator shall anchor the edges of all liners in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep, unless anchoring to encountered bedrock provides equivalent anchoring.

(8) The operator shall ensure that the liner is protected from any fluid force or mechanical damage at any point of discharge into or suction from the lined temporary pit.

(9) The operator shall design and construct a temporary pit to prevent run-on of surface water. A berm, ditch, proper sloping or other diversion shall surround a temporary pit to prevent run-on of surface water. During drilling operations, the edge of the temporary pit adjacent to the drilling or workover rig is not required to have run-on protection if the operator is using the temporary pit to collect liquids escaping from the drilling or workover rig and run-on will not result in a breach of the temporary pit.

(10) The volume of a temporary pit shall not exceed 10 acre feet, including freeboard.

(11) The part of a temporary pit used to vent or flare gas during a drilling or workover operation that is designed to allow liquids to drain to a separate temporary pit does not require a liner, unless the appropriate division district office requires an alternative design in order to protect surface water, ground water and the environment. The operator shall not allow freestanding liquids to remain on the unlined portion of a temporary pit used to vent or flare gas.

G. Permanent pits. The operator shall design and construct a permanent pit in accordance with the following requirements.

(1) Each permanent pit shall have a properly constructed foundation consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a permanent pit so that the inside grade of the levee is no steeper than two horizontal feet to one vertical foot (2H:1V). The levee shall have an outside grade no steeper than three horizontal feet to one vertical foot (3H:1V). The levee's top shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance.

(2) Each permanent pit shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions. The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(3) The primary (upper) liner

and secondary (lower) liner shall be geomembrane liners. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material the division's Santa Fe office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner compatibility shall comply with EPA SW-846 Method 9090A, or subsequent relevant publication.

(4) The division's Santa Fe office may approve other liner media if the operator demonstrates to the satisfaction of the division's Santa Fe office that the alternative liner protects fresh water, public health, and the environment as effectively as the specified media.

(5) The operator shall minimize liner seams and orient them up and down, not across, a slope. The operator shall use factory welded seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. The operator shall test a seam by establishing an air pressure between 33 and 37 psi in the pocket and monitoring that the pressure does not change by more than one percent during five minute after the pressure source is shut off from the pocket. Prior to field seaming, the operator shall overlap liners four to six inches and orient seams, up and down, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field welding and testing.

(6) At a point of discharge into or suction from the lined permanent pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage. External discharge or suction lines shall not penetrate the liner.

(7) The operator shall place a leak detection system between the upper and lower geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction;

and to facilitate clean-out maintenance. The material the operator places between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior sub-grade and of drainage lines and laterals shall be at least a two percent grade, i.e., two feet vertical drop per 100 horizontal feet. The piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the permanent pit's perimeter. The operator may install alternative methods that the division's Santa Fe office approves.

(8) The operator shall notify the division's Santa Fe office at least 72 hours prior to the primary liner's installation so that a representative of the environmental bureau in the division's Santa Fe office may inspect the leak detection system before it is covered.

(9) The operator shall construct a permanent pit in a manner that prevents overtopping due to wave action or rainfall and maintain a three foot freeboard at all times.

(10) The volume of a permanent pit shall not exceed 10 acre-feet, including freeboard.

(11) The operator shall maintain a permanent pit to prevent run-on of surface water. A permanent pit shall be surrounded by a berm, ditch or other diversion to prevent run-on of surface water.

H. Drying pads associated with closed-loop systems.

(1) An operator of a closed-loop system with drying pads shall design and construct the drying pads to include the following:

(a) appropriate liners that prevent the contamination of fresh water and protect public health and the environment;

(b) sumps to facilitate the collection of liquids derived from drill cuttings; and

(c) berms that prevent run-on of surface water or fluids.

I. Below-grade tanks. The operator shall design and construct a below-grade tank in accordance with the following requirements, as applicable.

(1) The operator shall ensure that a below-grade tank is constructed of materials resistant to the below-grade tank's particular contents and resistant to damage from sunlight.

(2) A below-grade tank shall have a properly constructed foundation consisting of a level base free of rocks, debris, sharp edges or irregularities to prevent punctures, cracks or indentations of the liner or tank bottom.

(3) The operator shall construct a below-grade tank to prevent overflow and the collection of surface water run-on.

(4) An operator shall construct a below-grade tank in accordance with one of the following designs.

(a) An operator may construct and use a below-grade tank that does not have double walls provided that the below-grade tank's side walls are open for visual inspection for leaks, the below-grade tank's bottom is elevated a minimum of six inches above the underlying ground surface and the below-grade tank is underlain with a geomembrane liner, which may be covered with gravel, to divert leaked liquid to a location that can be visually inspected. The operator shall equip below-grade tanks designed in this manner with a properly operating automatic high-level shut-off control device and manual controls to prevent overflows. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material that the appropriate division district office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner compatibility shall comply with EPA SW-846 Method 9090A, or subsequent relevant EPA publication.

(b) All below-grade tanks, in which the side walls are not open for visible inspection for leaks shall be double walled with leak detection capability.

(c) An operator may construct a below-grade tank according to an alternative system that the appropriate division district office approves based upon the operator's demonstration that the alternative provides equivalent or better protection.

(5) The operator of a single walled below-grade tank constructed and installed prior to June 16, 2008 that has the side walls open for visual inspection and that does not meet all the requirements in Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC is not required to equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC so long as it demonstrates integrity. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly drain the below-grade tank and remove it from service and comply with the closure requirements of 19.15.17.13 NMAC.

(6) The operator of a single walled below-grade tank constructed and installed prior to June 16, 2008 and where any portion of the tank sidewall is below the ground surface and not visible shall equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC, or close it, by June

16, 2013. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly drain the below-grade tank, remove it from service and comply with the closure requirements of 19.15.17.13 NMAC.

(7) The operator of a double walled below-grade tank constructed and installed prior to June 16, 2008 and which does not meet all the requirements in Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC is not required to equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC so long as it demonstrates integrity. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly drain the below-grade tank, remove it from service and comply with the closure requirements of 19.15.17.13 NMAC.

J. Multi-well fluid management pits. The operator shall design and construct a multi-well fluid management pit in accordance with the following requirements.

(1) The operator shall design and construct the pit to ensure the confinement of liquids to prevent releases and to prevent overtopping due to wave action or rainfall.

(2) The pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity. The operator shall construct a multi-well fluid management pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The levee shall have an outside grade no steeper than three horizontal feet to one vertical foot (3H:1V). The levee's top shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance. The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the pit in a manner that provides equivalent or better protection to fresh water, public health and the environment.

(3) Each multi-well fluid management pit shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions. The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(4) The primary (upper) liner and secondary (lower) liner shall be geomembrane liners. The geomembrane liner shall consist of 30-mil flexible PVC or

60-mil HDPE liner, or an equivalent liner material that the division's district office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner compatibility shall comply with EPA SW-846 Method 9090A or subsequent relevant publication.

(5) The appropriate division's district office may approve other liner media if the operator demonstrates to the satisfaction of the appropriate division's district office that the alternative liner protects fresh water, public health, and the environment as effectively as the specified media.

(6) The operator shall minimize liner seams and orient them up and down, not across, a slope. The operator shall use factory welded seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field welding and testing.

(7) At a point of discharge into or suction from the lined multi-well fluid management pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage. External discharge or suction lines shall not penetrate the liner.

(8) The operator shall place a leak detection system between the upper and lower geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. The operator may install alternative methods that the appropriate division's district office approves.

(9) The operator shall maintain a multi-well fluid management pit to prevent run-on of surface water. A multi-well fluid management pit shall be surrounded by a berm, ditch or other diversion to prevent run-on of surface water.

K. Burial trenches for closure. The operator shall design and construct a burial trench in accordance with the following requirements.

(1) A trench shall have a properly constructed foundation and side walls consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or

irregularities to prevent the liner's rupture or tear.

(2) Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.

(3) A trench shall be constructed with a geomembrane liner. The geomembrane shall consist of a 20-mil string reinforced LLDPE liner or equivalent liner that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner compatibility shall comply with EPA SW-846 Method 9090A.

(4) The operator shall minimize liner seams and orient them up and down, not across, a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches and orient liner seams parallel to the line of maximum slope, i.e., oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field welding and testing.

(5) The operator shall install sufficient liner material to reduce stress-strain on the liner.

(6) The operator shall ensure that the outer edges of all liners are secured for the deposit of the excavated waste material into the trench.

[19.15.17.11 NMAC - Rp, 19.15.17.11 NMAC, 6/28/13]

19.15.17.12 OPERATIONAL REQUIREMENTS:

A. General specifications. An operator shall maintain and operate a pit or closed-loop system, below-grade tank or sump in accordance with the following requirements.

(1) The operator shall operate and maintain a pit or closed-loop system, below-grade tank or sump to contain liquids and solids and maintain the integrity of the liner, liner system or secondary containment system, prevent contamination of fresh water and protect public health and the environment.

(2) The operator shall recycle, reuse, reclaim or dispose of all drilling fluids in a manner consistent with division rules.

(3) The operator shall not discharge into or store any hazardous waste in a pit, closed-loop system, below-grade tank or sump.

(4) If a pit liner's integrity is compromised above the liquid's surface then the operator shall repair the damage or initiate replacement of the liner within 48 hours of discovery or seek a variance from the appropriate division district office.

(5) If a pit or below-grade tank develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the operator shall remove all liquid above the damage or leak within 48 hours of discovery, notify the appropriate division office pursuant to 19.15.29 NMAC and repair the damage or replace the pit liner or below-grade tank as applicable.

(6) The injection or withdrawal of liquids from a pit shall be accomplished through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.

(7) The operator shall operate and install a pit, below-grade tank or sump to prevent the collection of surface water run-on.

(8) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain an unanticipated release.

B. Temporary pits. An operator shall maintain and operate a temporary pit in accordance with the following additional requirements.

(1) Only fluids or mineral solids generated or used during the drilling, completion or workover process may be discharged into a temporary pit. The operator shall maintain a temporary pit free of miscellaneous solid waste or debris. Immediately after cessation of a drilling or workover operation, the operator shall remove any visible layer of oil from the surface of a drilling or workover pit.

(2) The operator shall maintain at least two feet of freeboard for a temporary pit. For temporary extenuating circumstances an operator may maintain a freeboard of less than two feet. In such circumstances the operator shall maintain a log describing such circumstances and make the log available to the division upon request.

(3) The operator shall inspect a temporary pit containing drilling fluids at least daily while the drilling or workover rig is on location. Thereafter, the operator shall inspect the temporary pit weekly so long as liquids remain in the temporary pit. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request.

(4) The operator shall remove all free liquids from the surface of a temporary pit within 60 days from the date that the operator releases the last drilling or workover rig associated with the relevant pit permit. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103 upon well or workover completion. The appropriate division district office may grant an extension of up to two months, not to exceed temporary pit life span under Subsection R of 19.15.17.7 NMAC.

(5) The operator shall remove any liquids from the temporary pit used for cavitation within 48 hours after completing cavitation. The operator may request and receive additional time to remove the liquids from the temporary pit used for cavitation if the operator demonstrates to the appropriate division district office's satisfaction that it is not feasible to access the location within 48 hours.

C. Permanent pits. An operator shall maintain and operate a permanent pit in accordance with the following additional requirements.

(1) The operator shall maintain at least three feet of freeboard for a permanent pit; the operator shall permanently mark such level on the permanent pit.

(2) No oil or floating hydrocarbon shall be present in a permanent pit.

(3) The operator shall inspect the pit weekly while the pit has fluids and document at least monthly until the pit is closed. Inspections will include monitoring of the leak detection system. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request.

D. Below-grade tanks. An operator shall maintain and operate a below-grade tank in accordance with the following additional requirements.

(1) The operator shall not allow a below-grade tank to overflow or allow surface water run-on to enter the below-grade tank.

(2) The operator shall remove any measurable layer of oil from the fluid surface of a below-grade tank.

(3) The operator shall inspect the below-grade tank for leakage and damage at least monthly. The operator shall document the integrity of each tank at least annually and maintain a written record of the integrity for five years.

(4) The operator shall maintain adequate freeboard to prevent overtopping of the below-grade tank.

(5) The operator of a below-grade tank who discovers that the below-grade tank does not demonstrate integrity or that the below-grade tank develops any of the conditions identified in Paragraph (5) of Subsection A of 19.15.17.12 NMAC shall repair the damage or close the existing below-grade tank pursuant to the closure requirements of 19.15.17.13 NMAC.

(6) The operator of a below-grade tank who equips or retrofits the existing tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC shall visually inspect the area beneath the below-grade tank during the retrofit and document any areas that are wet, discolored or showing other evidence of a release on form C-141. The operator shall measure and report to the division the concentration

of contaminants in the wet or discolored soil with respect to the standards set forth in Table I of 19.15.17.13 NMAC. If there is no wet or discolored soil or if the concentration of contaminants in the wet or discolored soil is less than the standard set forth in Table I of 19.15.17.13 NMAC, then the operator shall proceed with the closure requirements of 19.15.17.13 NMAC prior to initiating the retrofit or replacement.

E. Sumps. The operator shall maintain and operate a sump in accordance with the following additional requirements.

(1) The operator shall visually inspect a sump's integrity annually and promptly repair or replace a sump that fails the inspection.

(2) The operator shall maintain records of sump inspections and make the records available for the appropriate division district office's review upon request.

F. Multi-well fluid management pits. An operator shall maintain and operate a multi-well fluid management pit in accordance with the following additional requirements.

(1) No operator shall place any substances in the pit other than stimulation fluids, produced water used for stimulation and drilling, and flow back from multiple wells.

(2) The operator shall remove any visible layer of oil from the surface of the pit.

(3) The operator shall maintain at least three feet of freeboard for the pit.

(4) The operator shall inspect the pit weekly while the pit has fluids and document at least monthly until the pit is closed. Inspections will include monitoring of the leak detection system. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request.

(5) The operator shall remove all fluids within 60 days from the date the operator ceases all stimulation operations associated with the pit permit. The appropriate division district office may grant an extension of up to two months.

[19.15.17.12 NMAC - Rp, 19.15.17.12 NMAC, 6/28/13]

19.15.17.13 CLOSURE AND SITE RECLAMATION REQUIREMENTS:

A. Closure plans. A closure plan that an operator submits in an application or registration pursuant to Subsection B of 19.15.17.9 NMAC, or any other closure plan required pursuant to 19.15.17 NMAC, shall describe the proposed closure method and the proposed procedures and protocols to implement and complete the closure.

B. Closure plans for a multi-well fluid management pit shall be filed with the appropriate division district office and shall describe the proposed procedures

and protocols for the removal of all unused stimulation liquids and the disposition of liner materials and other pit contents.

C. Closure where wastes are destined for disposal at division approved off-site facilities. This subsection applies to permanent pits, temporary pits, multi-well fluid management pits, drying pads and tanks associated with closed-loop systems and below-grade tanks.

(1) Notwithstanding the following, the operator of any pit or below-grade tank shall not commence closure without first obtaining approval of the closure plan submitted with the permit application or registration pursuant to 19.15.17.9 NMAC.

(2) The operator shall close the pit, drying pad or below-grade tank by first removing all contents and, if applicable, synthetic liners and transferring those materials to a division approved facility.

(3) The operator shall test the soils beneath the pit, drying pad for closed-loop system or below-grade tank as follows.

(a) At a minimum, a five point composite sample to include any obvious stained or wet soils, or other evidence of contamination shall be taken under the liner or the below-grade tank and that sample shall be analyzed for the constituents listed in Table I of 19.15.17.13 NMAC.

(b) If any contaminant concentration is higher than the parameters listed in Table I of 19.15.17.13 NMAC, the division may require additional delineation upon review of the results and the operator must receive approval before proceeding with closure.

(c) If all contaminant concentrations are less than or equal to the parameters listed in Table I of 19.15.17.13 NMAC, then the operator can proceed to backfill the pit, pad, or excavation with non-waste containing, uncontaminated, earthen material.

D. Closure where wastes are destined for burial in place or into nearby division approved pits or trenches. This subsection applies to waste from temporary pits and closed-loop systems, when such waste may be disposed of in place in the existing temporary pit or disposed of at a nearby temporary pit or burial trench that is not a permitted commercial facility regulated under 19.15.36 NMAC. A nearby temporary pit or burial trench that receives waste from another temporary pit must be onsite within the same lease.

(1) The operator shall not commence closure without first obtaining approval of the closure plan submitted with the permit application.

(2) The operator shall demonstrate and comply with the siting criteria set forth in Subsection C of 19.15.17.10 NMAC.

(3) Prior to closure the operator shall remove all free liquids reasonably

achievable from the pit or drying pad and tank associated with a closed-loop system and dispose of such liquids at a division approved facility.

(4) When closing a temporary pit the operator shall stabilize or solidify the remaining temporary pit contents to a capacity sufficient to support the final cover of the temporary pit. When transferring the waste contents from a drying pad and tank associated with a closed-loop system into a temporary pit or burial trench, the operator shall stabilize or solidify the waste contents to a capacity sufficient to support the final cover of the temporary pit or burial trench. The operator shall not mix the contents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to contents. The waste mixture must pass the paint filter liquids test (EPA SW-846, Method 9095 or other test methods approved by the division).

(5) The operator shall collect, at a minimum, a five point composite of the contents of the temporary pit or drying pad/tank associated with a closed-loop system to demonstrate that, after the waste is solidified or stabilized with soil or other non-waste material at a ratio of no more than 3:1 soil or other non-waste material to waste, the concentration of any contaminant in the stabilized waste is not higher than the parameters listed in Table II of 19.15.17.13 NMAC.

(6) If, after appropriate stabilization, the concentrations of all contaminants in the contents from a temporary pit or drying pad and tank associated with a closed-loop system are less than or equal to the parameters of listed in Table II of 19.15.17.13 NMAC, the operator may either proceed to dispose of wastes in an existing temporary pit or construct a burial trench for disposal of these wastes.

(7) If the concentration of any contaminant in the contents, after mixing with soil or non-waste material to a maximum ratio of 3:1, from a temporary pit or drying pad/tank associated with a closed-loop system is higher than constituent concentrations shown in Table II of 19.15.17.13 NMAC, then closure must proceed in accordance with Subsection C of 19.15.17.13 NMAC.

(8) Upon achieving all applicable waste stabilization in the temporary pit or transfer of stabilized wastes to the temporary pit or burial trench, the operator shall:

(a) fold the outer edges of the trench liner to overlap the waste material in the trench prior to the installation of the geomembrane cover;

(b) install a geomembrane cover over the waste material in the lined trench or temporary pit; the operator shall install the geomembrane cover in a manner that prevents the collection of infiltration water

in the lined trench or temporary pit and on the geomembrane cover after the soil cover is in place; the geomembrane cover shall consist of a 20-mil string reinforced LLDPE liner or equivalent cover that the appropriate division district office approves; the geomembrane cover shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions; cover compatibility shall comply with EPA SW-846 Method 9090A;

(c) cover the pit/trench with non-waste containing, uncontaminated, earthen materials and construct a soil cover prescribed by the division in Paragraph (3) of Subsection H of 19.15.17.13 NMAC.

(9) If the operator has removed the wastes and the liner to a burial trench pursuant to this subsection, the operator shall test the soils beneath the temporary pit as follows.

(a) At a minimum, a five point composite sample to include any obvious stained or wet soils, or other evidence of contamination shall be taken under the liner or the below-grade tank and that sample shall be analyzed for the constituents listed in Table I of 19.15.17.13 NMAC.

(b) If any contaminant concentration is higher than the parameters listed in Table I of 19.15.17.13 NMAC, the division may require additional delineation upon review of the results and the operator must receive approval before proceeding with closure.

(c) If all contaminant concentration are less than or equal to the parameters listed in Table I of 19.15.17.13 NMAC, then the operator can proceed to backfill the pit, pad, or excavation with non-waste containing, uncontaminated, earthen material.

E. Closure notice.

(1) The operator shall notify the surface owner by certified mail, return receipt requested that the operator plans closure operations at least 72 hours, but not more than one week, prior to any closure operation. Notice shall include well name, API number and location. Evidence of mailing of the notice to the address of the surface owner shown in the county tax records is sufficient to demonstrate compliance with this requirement.

(2) The operator of a temporary pit, multi-well fluid management pit, below-grade tank or an operator who is approved for onsite closure shall notify the appropriate division district office verbally and in writing at least 72 hours, but not more than one week, prior to any closure operation. The notice shall include the operator's name and the location to be closed by unit letter, section, township and range. If the closure is associated with a particular well, then the notice shall also include the well's name, number and API number.

(3) An operator of a permanent pit shall notify the Santa Fe office at least 60 days prior to cessation of operations and provide a proposed schedule for closure. If there is no closure plan on file with the Santa Fe office applicable to the permanent pit, the operator shall provide a closure plan with this notice. Upon receipt of the notice and proposed schedule, the Santa Fe office shall review the current closure plan for adequacy and inspect the site.

(4) When onsite burial occurs on private land, the operator shall file a deed notice identifying the exact location of the onsite burial with the county clerk in the county where the onsite burial occurs.

F. Closure report and burial identification.

(1) Within 60 days of closure completion, the operator shall submit a closure report on form C-144, with necessary attachments to document all closure activities including sampling results; information required by 19.15.17 NMAC; and details on back-filling, capping and covering, where applicable. In the closure report, the operator shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in the approved closure plan. If the operator used a temporary pit, the operator shall provide a plat of the pit location on form C-1 05 within 60 days of closing the temporary pit.

(2) If the operator elects to conduct onsite burial under Subsection D of 19.15.17.13 NMAC, the operator shall report the exact location of the onsite burial on form C-105 filed with the division.

(3) The operator shall place a steel marker at the center of an onsite burial. The steel marker shall be not less than four inches in diameter and shall be cemented in a three-foot deep hole at a minimum. The steel marker shall extend at least four feet above mean ground level and at least three feet below ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, and that the marker designates an onsite burial location shall be welded, stamped or otherwise permanently engraved into the metal of the steel marker. A person shall not build permanent structures over an onsite burial without the appropriate division district office's written approval. A person shall not remove an onsite burial marker without the division's written permission.

G. Timing requirements for closure. An operator shall close a pit, drying pad associated with a closed-loop system or below-grade tank within the following time periods.

(1) An operator shall close a permitted permanent pit within 60 days of cessation of operation of the pit in

accordance with a closure plan approved by the appropriate office.

(2) An operator shall close a permitted temporary pit within six months from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103, filed with the division, upon the well's or work-over's completion. The appropriate division district office may grant an extension not to exceed three months.

(3) An operator shall close a drying pad used for a closed-loop system within six months from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103, filed with the division, upon the well's or work-over's completion. The appropriate division district office may grant an extension not to exceed six months.

(4) Closure methods for below-grade tanks.

(a) Within 60 days of cessation of operations, the operator shall remove liquids and sludge from a below-grade tank prior to implementing a closure method and shall dispose of the liquids and sludge in a division-approved facility.

(b) Within six months of cessation of operations, the operator shall remove the below-grade tank and dispose of it in a division-approved facility or recycle, reuse, or reclaim it in a manner that the appropriate division district office approves. If there is any equipment associated with a below-grade tank, then the operator shall remove the equipment, unless the equipment is required for some other purpose.

(5) An operator shall close a multi-well fluid management pit within six months from the date that the operator ceases all stimulation operations on all wells identified in the permit. The operator shall note the date of the cessation of drilling and stimulation operations on form C-105 or C-103 filed with the division. The appropriate division district office may grant an extension for closure not to exceed six months.

H. Reclamation of pit locations, onsite burial locations and drying pad locations.

(1) Site contouring.

(a) Once the operator has closed a pit or trench or is no longer using a drying pad, below-grade tank or an area associated with a closed-loop system, pit, trench or below-grade tank, the operator shall reclaim the pit location, drying pad location, below-grade tank location or trench location and all areas associated with the closed-loop system, pit, trench or below-grade tank including associated access roads to a safe and stable condition that blends with the surrounding undisturbed area. The operator shall substantially restore the impacted surface area to the condition that existed prior to oil and gas operations by placement of the soil cover as provided in Paragraph (2) of Subsection H of 19.15.17.13 NMAC, recontour the location and associated areas to a contour that approximates the original contour and blends with the surrounding topography and re-vegetate according to Paragraph (5) in Subsection H of 19.15.17.13 NMAC.

(b) The operator may propose an alternative to the re-vegetation or recontouring requirement if the operator demonstrates to the appropriate district office that the proposed alternative provides equal or better prevention of erosion, and protection of fresh water, public health and the environment. The proposed alternative shall be agreed upon by the surface owner. The operator shall submit the proposed alternative, with written documentation that the surface owner agrees to the alternative, to the division for approval.

(c) Areas reasonably needed for production operations or for subsequent drilling operations shall be compacted, covered, paved, or otherwise stabilized and maintained in such a way as to minimize dust and erosion to the extent practicable.

(2) Soil cover designs for drying pads associated with closed-loop systems and below-grade tanks. The soil cover for closures after site contouring, where the operator has removed the below-grade tank or drying pad contents and liner, and if necessary remediated the soil beneath the below-grade tank or drying pad liner to chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0, shall consist of the background thickness of topsoil or one foot of suitable material, whichever is greater.

(3) Soil cover designs for reclamation of pit locations and onsite burial locations. The soil cover for burial in-place or trench burial shall consist of a minimum of four feet of non-waste containing, uncontaminated, earthen material with chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0. The soil cover shall include either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(4) The operator shall construct the soil cover to the site's existing grade and prevent ponding of water and erosion of the cover material.

(5) Reclamation and re-vegetation.

(a) Reclamation of areas no longer in use. All areas disturbed by the closure of pits and below-grade tanks, except areas reasonably needed for production operations or for subsequent drilling operations, shall be reclaimed as early and as nearly as practicable to their original condition or their final land use and shall be maintained to control dust and minimize erosion to the extent practicable.

(b) Topsoils and subsoils shall be replaced to their original relative positions and contoured so as to achieve erosion control, long-term stability and preservation of surface water flow patterns. The disturbed area then shall be reseeded in the first favorable growing season following closure of a pit, drying pad associated with a closed-loop system or below-grade tank.

(c) Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent (50%) of pre-disturbance levels and a total percent plant cover of at least seventy percent (70%) of pre-disturbance levels, excluding noxious weeds.

(d) Other regulatory requirements. The re-vegetation and reclamation obligations imposed by other applicable federal or tribal agencies on lands managed by those agencies shall supersede these provisions and govern the obligations of any operator subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.

(e) The operator shall notify the division when reclamation and re-vegetation are complete.

Table I Closure Criteria for Soils Beneath Below-Grade Tanks, Drying Pads Associated with Closed-Loop Systems and Pits where Contents are Removed			
Depth below bottom of pit to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**

≤50 feet	Chloride	EPA 300.0	600 mg/kg
	TPH	EPA SW-846 Method 418.1	100 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
51 feet-100 feet	Chloride	EPA 300.0	10,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
> 100 feet	Chloride	EPA 300.0	20,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg

*Or other test methods approved by the division

**Numerical limits or natural background level, whichever is greater

Table II Closure Criteria for Burial Trenches and Waste Left in Place in Temporary Pits			
Depth below bottom of pit to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
25-50 feet	Chloride	EPA Method 300.0	20,000 mg/kg
	TPH	EPA SW-846 Method 418.1	100 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
51-100 feet	Chloride	EPA Method 300.0	40,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg

> 100 feet	Chloride	EPA Method 300.0	80,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg

*Or other test methods approved by the division

**Numerical limits or natural background level, whichever is greater

[19.15.17.13 NMAC - Rp, 19.15.17.13 NMAC, 6/28/13]

19.15.17.14 EMERGENCY ACTIONS:

A. Permit not required. In an emergency an operator may construct a pit without a permit to contain fluids, solids or wastes, if an immediate danger to fresh water, public health or the environment exists.

B. Construction standards. The operator shall construct an emergency pit, to the extent possible given the emergency, in a manner that is consistent with the requirements for a temporary pit specified in 19.15.17 NMAC and that prevents the contamination of fresh water and protects public health and the environment.

C. Notice. The operator shall notify the appropriate division district office as soon as possible (if possible before construction begins) of the need for such pit's construction.

D. Use and duration. A pit constructed in an emergency may be used only for the emergency's duration. If the emergency lasts more than 48 hours, then the operator shall seek the appropriate division district office's approval for the pit's continued use. The operator shall remove all fluids, solids or wastes within 48 hours after cessation of use unless the appropriate division district office extends that time period.

[19.15.17.14 NMAC - Rp, 19.15.17.14 NMAC, 6/28/13]

19.15.17.15 EXCEPTIONS AND VARIANCES:

A. Variances.

(1) An operator shall demonstrate with a complete application to the appropriate division district office that the requested variance provides equal or better protection of fresh water, public health and the environment. The appropriate division district office shall approve or deny the variance within 60 days of receipt of the complete application.

(2) If the appropriate division district office denies the variance then it shall notify the operator within 60 days of receipt of the complete application for the reasons of denial by certified mail, return receipt requested. If the operator requests a hearing within 10 days after receipt of such notice, the division shall set the matter for hearing, with notice to the operator and the appropriate division district office.

(3) An application for a variance shall include:

(a) a statement in detail explaining why the applicant wants to vary from the requirement of 19.15.17 NMAC, and

(b) a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.

(4) If a variance goes to hearing pursuant to Paragraph (2) of Subsection A of 19.15.17.15 NMAC, in addition to the hearing process required by 19.15.4 NMAC, the application for hearing shall include:

(a) a copy of the complete application submitted for a variance under Paragraph (3) of Subsection A of 19.15.17.15 NMAC;

(b) proof of notification to the surface owner of the location of the requested variance.

(5) The division clerk will set the application for hearing as soon as practicable.

B. Exceptions.

(1) An operator may apply to the division's Santa Fe office for an exception that is allowed by a provision of 19.15.17 NMAC.

(2) The operator shall give written notice by certified mail, return receipt requested, to:

(a) the surface owner of record where the exception is requested, or will be located;

(b) surface owners of record within one-half mile of such location;

(c) the county commission of the county where the pit, or proposed alternative is, or will be, located;

(d) the appropriate city official if the pit, or proposed alternative is, or will be, located within city limits, within one-half mile of the city limits or within the city's zoning and planning jurisdiction;

(e) federal agencies managing lands within one-half mile of such location;

(f) affected tribal or pueblo governments; and

(g) such other persons as the division's Santa Fe office may direct.

(3) Receipt of notice that is given pursuant to this sub-part shall not be construed as an indication of standing to request a hearing pursuant to Paragraph (6) of Subsection B of 19.15.17.15 NMAC.

(4) The operator shall issue public notice by publication one time in a newspaper of general circulation in the county where the pit, or proposed alternative, is, or will be located. Required written and public notices require the division's Santa Fe office's approval. The division shall post notice of the application on the division's website.

(5) An operator shall demonstrate with a complete application to the Santa Fe office that the requested exception provides equal or better protection of fresh water, public health and the environment. The Santa Fe office shall approve or deny the exception within 90 days of receipt of the complete application.

(6) Within 30 days after the operator or the division sends notice of the requested exception anyone may submit comments to

the director and any person with standing to contest the requested exception may request a hearing. If the director determines that a request for hearing presents issues that have technical merit or there is significant interest from the affected public, then the director may cause the matter to be set for hearing. If the director determines that a hearing is not necessary due to technical merit, significant public interest or otherwise then the Santa Fe office may grant the exception without a hearing. The Santa Fe office may grant the exception administratively if the Santa Fe office receives no comments or requests for hearing within the time for commenting.

(7) If the Santa Fe office denies the exception then it shall notify the operator within 90 days of receipt of the complete application for the reasons of denial by certified mail, return receipt requested. If the operator requests a hearing within 21 days after receipt of such notice, the division shall set the matter for hearing, with notice to the operator and the appropriate division district office.

(8) An application for an exception shall include:

(a) a statement in detail explaining why the applicant wants an exception to the requirement of 19.15.17 NMAC, and

(b) a detailed written demonstration that the exception will provide equal or better protection of fresh water, public health and the environment.

(9) If an exception goes to hearing pursuant to Subsection B of 19.15.17.15 NMAC, in addition to the requirements of 19.15.4 NMAC, the hearing application shall include:

(a) a copy of the complete application submitted for the exception; and

(b) a proof of notification of the hearing application to parties identified in Paragraph (2) of Subsection B of 19.15.17.15 NMAC.

(10) The division clerk will set the application for hearing as soon as practicable.

[19.15.17.15 NMAC - Rp, 19.15.17.15 NMAC, 6/28/13]

19.15.17.16 P E R M I T APPROVALS, CONDITIONS, DENIALS, REVOCATIONS, SUSPENSIONS, MODIFICATIONS OR TRANSFERS:

A. The division shall review all applications to permit facilities subject to 19.15.17 NMAC. Within 30 days of receiving an application the division shall make an administrative completeness determination or provide written notice of deficiencies to the application's signatory. The application will be considered complete if written notice is not provided by the division within the 30 day evaluation period.

B. Whether or not the

division deems an application to be administratively complete within the 30 day evaluation period, the division shall also have an additional 30 days to approve, deny or approve with conditions an application. If the division does not take action within the 60 days review period, then the application is deemed denied and the operator may file an application for hearing with the division clerk.

C. Conditions. The division may impose conditions or requirements that it determines are necessary and proper for the protection of fresh water, public health, and the environment provided the conditions or requirements are based on the provisions of the Oil and Gas Act 70-2 NMSA or current division regulations. The division shall incorporate such additional conditions or requirements into the permit.

D. Denial of application. The division shall deny, in writing, an application for a permit if it finds that the application and materials that the operator submitted for consideration with the application do not sufficiently demonstrate that the operator can construct, operate and close the proposed pit, or proposed alternative in a manner that is protective of fresh water, public health, and the environment.

E. Revocation, suspension or modification of a permit. The operator may apply to the division for a modification of the permit pursuant to 19.15.17 NMAC. The operator shall demonstrate that the proposed modification complies with the applicable provisions of 19.15.17 NMAC. The division may revoke, suspend or impose additional operating conditions or limitations on a permit at any time, after notice and opportunity for a hearing, if the division determines that the operator or the permitted facility is in material breach of any applicable statutes or rules, or that such action is necessary for the protection of fresh water, public health or the environment. The division shall notify the operator by certified mail, return receipt requested, of any intended revocation, suspension or imposition of additional conditions, and the operator shall have 10 days after receipt of notification to request a hearing pursuant to 19.15.4 NMAC. The division may suspend a permit or impose additional conditions or limitations without hearing in an emergency to forestall an imminent threat to fresh water, public health, or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended.

F. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. The division's approval of an application to transfer a well or other facility with which a permitted pit is associated shall constitute approval of the transfer of the permit for the

pit.

G. Division approvals. The division shall grant or confirm any division approval authorized by a provision of 19.15.17 NMAC by written statement. Written statements include e-mail.

[19.15.17.16 NMAC - Rp, 19.15.17.16 NMAC, 6/28/13]

HISTORY OF 19.15.17 NMAC:

History of Repealed Material:

19.15.17 NMAC, Pits, Closed-Loop Systems, Below-Grade Tanks and Sumps, filed 5/30/2008 - Repealed effective 6/28/2013.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20.7.3 NMAC named "Liquid Waste Disposal and Treatment," filed 7/26/2005 is repealed and replaced with 20.7.3 NMAC named "Liquid Waste Disposal and Treatment". The repeal and replace will become effective 9/1/2013.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTE WATER AND WATER SUPPLY FACILITIES
PART 3 LIQUID WASTE DISPOSAL AND TREATMENT**

20.7.3.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[20.7.3.1 NMAC - Rp, 20.7.3.1 NMAC, 9/1/13]

20.7.3.2 SCOPE:

A. This part, 20.7.3 NMAC, applies to on-site liquid waste systems, and effluent from such systems, that receive two thousand (2,000) gallons or less of liquid waste per day, and that do not generate discharges that require a discharge plan pursuant to 20.6.2 NMAC or a national pollutant discharge elimination system (NPDES) permit.

B. 20.7.3.306 and 808 NMAC apply to the disposal of on-site septage and holding tank wastes.

[20.7.3.2 NMAC - Rp, 20.7.3.2 NMAC, 9/1/13]

20.7.3.3 STATUTORY AUTHORITY: NMSA 1978, Sections 74-1-6, 74-1-7(A)(3), 74-1-8(A)(3), and 74-1-9 (Repl. Pamp 1993 and Cum. Supp. 1997).

[20.7.3.3 NMAC - Rp, 20.7.3.3 NMAC,

9/1/13]

20.7.3.4 D U R A T I O N :

Permanent.

[20.7.3.4 NMAC - Rp, 20.7.3.4 NMAC, 9/1/13]

20.7.3.5 EFFECTIVE DATE:

September 1, 2013, except where a later effective date is indicated in the history note at the end of a section.

[20.7.3.5 NMAC - Rp, 20.7.3.5 NMAC, 9/1/13]

20.7.3.6 OBJECTIVE:

To protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and ground water contamination from on-site liquid waste disposal practices.

[20.7.3.6 NMAC - Rp, 20.7.3.6 NMAC, 9/1/13]

20.7.3.7 DEFINITIONS:

As used in 20.7.3 NMAC.

A. Terms starting with the letter 'A' are defined as follows:

(1) "absorption area" means the area in square feet of infiltrative surface in a soil disposal system designated to receive effluent from a treatment unit;

(2) "absorption bed" means a conventional disposal bed greater than three feet in width and where the minimum horizontal dimension is greater than the vertical dimension;

(3) "advanced treatment" means any process of wastewater treatment that removes a greater amount of contaminants than is accomplished through primary treatment; "advanced treatment" may include physical or chemical processes;

(4) "aggregate" means clean washed gravel or crushed rock, having a hardness value of 3 or more on the Mohs scale of hardness, or a synthetic media reviewed by the wastewater technical advisory committee and approved by the department; shall have a minimum size of 3/4 inch and a maximum size of 2 1/2 inches, no greater than 4% fines by weight or volume and provide no less than 35% void space under field conditions; shall be durable, inert, maintain its integrity, not collapse or disintegrate with time, and not be detrimental to the performance of the system or to groundwater quality;

(5) "alternative disposal" means any approved on-site liquid waste disposal method used in lieu of, including modifications to, a conventional disposal method;

(6) "amendment of permit" means a change that does not affect the permitability of a liquid waste system, including a change of ownership or installer, and is not a

"modification" as defined in this section;

(7) "applicant" means the owner applying for a permit to install, modify or operate an on-site liquid waste system;

(8) "approved" means:

(a) materials, products or procedures that have been reviewed by the wastewater technical advisory committee, if required, and accepted for use by the department;

(b) a liquid waste system that was permitted and installed in compliance with the standards and requirements of this regulation and received department authorization for use;

(c) a person or entity authorized by the department to design, install, modify or maintain liquid waste systems or a person authorized by the department to perform site or liquid waste system evaluations;

(d) materials, products or procedures that are approved or meet minimum standards certified by the international association of plumbing and mechanical officials (IAPMO), as applicable; and

(9) "arroyo" means a dry wash or draw that flows occasionally in response to precipitation, a watercourse (as a creek or stream) in an arid region or a water carved gully or channel.

B. Terms starting with the letter 'B' are defined as follows:

(1) "bedrock" means the more or less solid, undisturbed rock in place either at the surface or beneath surficial deposits of gravel, sand or soil, or a consolidated rock formation of impervious material that may exhibit jointed, fractured or deteriorated characteristics, or the R horizon of a soil profile as defined in the United States department of agriculture (USDA) soil survey manuals;

(2) "bedroom" means any room within a building that is designated as a sleeping room on drawings submitted to the responsible building permitting authority, manufactured housing authority, or in the case of unpermitted systems, to the department;

(3) "biochemical oxygen demand" or "BOD" means the rate at which organisms use the oxygen in water or wastewater while stabilizing decomposable organic matter under aerobic conditions;

(4) "blackwater" means waste from a liquid flushing toilet, urinal, kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

(5) "body of water" means all constrained water including water situated wholly or partly within or bordering upon New Mexico, whether surface or subsurface, public or private;

(6) "building drain" means that part of the lowest piping of a drainage

system that receives the collective liquid waste discharge from soil, waste and other drainage piping inside a building and conveys it to the building sewer that begins two feet outside the vertical plane of the building wall, residential or commercial unit; and

(7) "building sewer" means that part of the horizontal piping of a drainage system that extends from the end of the building drain located two feet outside the building wall and that receives the liquid waste discharge from the building drain and conveys it to a liquid waste treatment unit or approved point of disposal.

C. Terms starting with the letter 'C' are defined as follows:

(1) "canal" means a man-made ditch or channel that carries water for purposes other than domestic consumption;

(2) "certificate of registration" means a permit to operate an unpermitted liquid waste system installed prior to February 1, 2002 after an evaluation is conducted pursuant to Subsection J of 20.7.3.401 NMAC;

(3) "cesspool" means an excavation or non-water tight unit that receives untreated water-carried liquid waste allowing direct discharge to the soil;

(4) "clay" means:

(a) a soil separate consisting of particles less than 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 40% or more clay, less than 45% sand and less than 30% silt;

(5) "clearance" means the vertical thickness of suitable soil between the lowest point of a liquid waste disposal system and the seasonal high ground water table, bedrock or other limiting layer;

(6) "cluster system" means a wastewater system that serves more than one unit and treats 2000 gallons per day or less of wastewater;

(7) "coarse sand" means soil comprised of 25% or more of soil particles 0.5 to 2.0 mm in diameter and less than 50% of any other grade of sand;

(8) "commercial unit" means a structure that is not a residential unit but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers or floor drains for receiving liquid waste including but not limited to uses included in Table 201.1;

(9) "conditional approval" means the approval of an on-site treatment or dispersal product that has been reviewed by the wastewater technical advisory committee and granted permission by the department to install the product or products on a limited number of sites for the purpose of verifying performance of the product;

(10) "conventional disposal" means a subsurface soil absorption system

with gravity distribution of the effluent, with or without a lift station, constructed in accordance with the standards set forth in this regulation, including trenches, absorption beds and seepage pits;

(11) "conventional treatment" means a septic tank where primary treatment occurs; and

(12) "conventional treatment system" means an on-site liquid waste system utilizing both conventional treatment and conventional disposal, including privies, holding tanks and vaults.

D. Terms starting with the letter 'D' are defined as follows:

(1) "degrade a body of water" means to reduce the physical, chemical or biological qualities of a body of water and includes, but is not limited to, the release of material that could result in the exceeding of standards established by 20.6.4 NMAC, Standards for Interstate and Intrastate Surface Waters, by 20.6.2 NMAC, Ground and Surface Water Protection and by 20.7.10 NMAC, Drinking Water;

(2) "department" means the New Mexico environment department;

(3) "design flow" means the flow rate for which an on-site liquid waste system must be designed in order to assure acceptable system performance, assuming the use of conventional plumbing fixtures;

(4) "disinfected" or "disinfection" means the use of any process designed to effectively kill most micro-organisms contained in liquid waste effluent including essentially all pathogenic (disease causing) organisms, as indicated by the reduction of the E. coli concentration to a specific level; these processes include, but are not limited to, suitable oxidizing agents such as chlorine, ozone and ultraviolet light;

(5) "disposal system" means a generally recognized system for disposing of the discharge from a liquid waste treatment unit and includes, but is not limited to, seepage pits, drainfields, evapotranspiration systems, sand mounds and irrigation systems;

(6) "domestic liquid waste" means wastewater that does not exceed 300 mg/l BOD, 300 mg/l TSS, 80 mg/l total nitrogen or 105 mg/l fats, oils and grease; and

(7) "drainage ditch" means an unlined trench dug for the purpose of draining water from the land or for transporting water for use on the land.

E. Terms starting with the letter 'E' are defined as follows:

(1) "edge of a watercourse, canal or arroyo" means that point of maximum curvature at the upper edge of a definite bank or, if no definite bank exists, the highest point where signs of seasonal high water flow exist;

(2) "effluent" means the discharge from the final treatment unit;

(3) "effluent disposal well" means a prohibited method of disposal consisting of a drilled, driven or bored shaft or dug hole with depth greater than any surface dimension, used for subsurface emplacement of liquid waste, including, but not limited to, abandoned water supply wells, irrigation wells and test holes, but excluding seepage pits used as disposal systems, which conform to the standards in 20.7.3.702 NMAC;

(4) "effluent irrigation" means the use of wastewater effluent to water landscaped areas, fruit trees or nut trees;

(5) "elevated system" means a system installed either partially or completely above grade in a constructed fill area for the purpose of meeting clearance to a limiting layer;

(6) "enclosed system" means a watertight on-site liquid waste system that does not discharge to the soil, including, but not limited to, holding tanks and lined evapotranspiration systems;

(7) "established on-site liquid waste system" means an on-site liquid waste system that has been in active use at any time during the 10 years prior to submission of a permit application and in compliance with any liquid waste disposal regulation in effect at the time of installation, excluding the permitting or registration process, but does not include cesspools installed after September 14, 1973;

(8) "evaluator" or "third party evaluator" means a third party who has the qualifications as set forth in Paragraph (2) of Subsection B of 20.7.3.904 NMAC;

(9) "evapotranspiration system" means a disposal system designed to dispose of effluent through evaporation and plant uptake and transpiration; and

(10) "experimental approval" means the approval of an on-site treatment or dispersal product that has been reviewed by the wastewater technical advisory committee and granted permission by the department to install the product or products on a very limited number of sites for the purpose of verifying performance and obtaining advancement to conditional approval.

F. Terms starting with the letter 'F' are defined as follows:

(1) "failed system" means, without limitation, an on-site liquid waste system that does not operate as permitted, that does not provide a level of treatment at least as effective as that provided by on-site liquid waste systems that meet the requirements of 20.7.3 NMAC or that poses a hazard to public health or degrades a body of water; and

(2) "fixture units" means a quantity of flow as defined in the New Mexico plumbing code upon which plumbing systems are sized.

G. Terms starting with the letter 'G' are defined as follows:

(1) "gravel" means, for purposes of soils classification, a soil separate consisting of particles greater than 2 mm in diameter;

(2) "graywater" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers; and

(3) "ground water" means interstitial water that occurs in saturated earth material and is capable of entering a well in sufficient amounts to be utilized as a water supply.

H. Terms starting with the letter 'H' are defined as follows:

(1) "hazard to public health" means the indicated presence in water or soil of biological, chemical or other contaminants under such conditions that could adversely impact human health, including, but is not limited to, surfacing liquid waste, degradation to a body of water used as, or has the potential to be used as, a domestic water supply source, presence of an open cesspool or tank or exposure of liquid waste or septage in a manner that allows transmission of disease;

(2) "holding tank" means a non-discharging watertight tank designed to receive and retain liquid waste for periodic pumping and disposal off-site;

(3) "homeowner" means a person or persons who owns and occupies, or plans to occupy, a single family home; and

(4) "household hazardous waste" means a wide range of household products that have the characteristics of hazardous waste when discarded, including but not limited to, pesticides and herbicides, oil-based paints and stains, automobile fluids (antifreeze, motor oil, transmission, steering and brake fluids, gasoline), pool chemicals, hobby chemicals and darkroom chemicals.

I. Terms starting with the letter 'I' are defined as follows:

(1) "imminent hazard to public health" means any situation with the potential to immediately and adversely impact or threaten public health or safety;

(2) "impervious formation" means any soil or rock formation with a hydraulic conductivity of 10^{-7} cm/sec or less;

(3) "industrial process wastewater" means non-household wastewater, excepting the following: human excreta; used water from showers, washbasins and dishwashers; and food preparation waste; any wastewater generated in a commercial activity that contains the materials prohibited by Subsection A of 20.7.3.304 NMAC is industrial process wastewater;

(4) "inspector" means a person employed by the department who is

competent in the physical examination and evaluation of on-site liquid waste systems;

(5) "installer" means any person who holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division for the construction of on-site liquid waste systems;

(6) "installer specialist" means a person certified by the department pursuant to Subsection E of 20.7.3.904 NMAC;

(7) "interstitial water" means water in spaces between solid earth particles; and

(8) "invert" means the lowest portion of the internal cross section of a pipe or fitting.

J. Terms starting with the letter 'J' are defined as follows: [RESERVED]

K. Terms starting with the letter 'K' are defined as follows: [RESERVED]

L. Terms starting with the letter 'L' are defined as follows:

(1) "lateral" means a secondary water or wastewater pipeline branching directly from a central supply pipeline or manifold leading to an irrigation site;

(2) "limiting layer" means an impervious formation, bedrock or the seasonal high ground water table;

(3) "liner" means a manufactured or naturally occurring substance that restricts seepage to no more than 10^{-7} cm/sec. over the design service life of the lined unit; manufactured liners must have a minimum single-ply thickness of 20 mils and have no leaks;

(4) "liquid capacity" means the volume of liquid that is contained in a septic tank or treatment unit measured from the invert of the outlet; "liquid capacity" shall be calculated by multiplying the inside length by the inside width by the depth measured from the invert of the outlet to the unit's floor and converting the resulting product to gallons;

(5) "liquid waste" means wastewater generated from any residential or commercial unit where the total wastewater received by a liquid waste system is 2000 gallons per day or less; liquid waste includes without limitation human excreta and water carried waste from plumbing fixtures, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes- and dish-washing machines and floor drains; "liquid waste" also includes non-water carried wastes discharged into holding tanks, privies and vaults; specifically excluded from the definition of "liquid waste" are industrial process wastewaters, roof drainage, mine or mill tailings or wastes;

(6) "liquid waste system" means a liquid waste treatment unit or units and associated disposal systems, or parts thereof,

servicing a residential or commercial unit; "liquid waste systems" include enclosed systems, holding tanks, vaults and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(7) "liquid waste treatment unit" means a component of the on-site liquid waste system where removal, reduction or alteration of the objectionable contaminants of wastewater is designed to occur; it may include a holding component but does not include soil;

(8) "load" or "loading" means:

(a) in the context of the biological or chemical load received by an on-site liquid waste system, the amount of material applied to an on-site system liquid waste component per unit area or unit volume;

(b) in the context of the structural load applied to an on-site liquid waste structural component, the structural force applied to a liquid waste system component per surface area; and

(9) "lot" means a unified parcel legally recorded or validated by other means, including any contiguous parcel subject to a legally recorded perpetual easement that dedicates the servient parcel for the disposal of liquid waste generated on the dominant parcel.

M. Terms starting with the letter 'M' are defined as follows:

(1) "maintenance contract" means a contract between the system owner and a maintenance service provider in which the maintenance service provider agrees to provide periodic inspections in regards to the operation, maintenance and repair of the system;

(2) "maintenance service provider" means a public entity, company or individual in the business of maintaining liquid waste systems according to manufacturers' specifications;

(3) "manifold" means a part of a water distribution system normally located between the laterals and central supply line; the "manifold" splits the flow into a number of flows, either for distribution or for application to the land;

(4) "may" means discretionary, permissive or allowed; and

(5) "modify" or "modification" of a liquid waste system means:

(a) to change the method of on-site liquid waste treatment or disposal;

(b) to change the design of the on-site liquid waste system;

(c) to increase the design flow or load received by the on-site liquid waste system above the original design flow or load; or

(d) replace or expand the treatment unit or disposal system.

N. Terms starting with the letter 'N' are defined as follows:

(1) "New Mexico plumbing code" means 14.8.2 NMAC; and

(2) "non-discharging system" means a watertight system that allows no discharge of wastewater except through evaporation, transpiration or pumping, including, but not limited to, lined evaporation systems, lined evapotranspiration systems, holding tanks and vaults.

O. Terms starting with the letter 'O' are defined as follows:

(1) "off-site water" means the domestic water supply for the lot is from:

(a) a private water supply source that is neither within the lot nor outside the lot within one hundred (100) feet of the property line of the lot; or

(b) a public water supply source that is not within the lot;

(2) "on-site" means located on or within a lot;

(3) "on-site liquid waste system" means a liquid waste system located on the lot where the liquid waste is generated;

(4) "on-site water" means the domestic water supply for the lot is from:

(a) a private water supply source that is within the lot or within 100 feet of the property line of the lot; or

(b) a public water supply source that is within the boundaries of the lot; and

(5) "owner" means any person or persons who own:

(a) an on-site liquid waste system or any component thereof; or

(b) any lot upon which any on-site liquid waste system or any component thereof is located; in the case of property sold or purchased on a real estate contract, the "owner" of the property is the buyer; if the property sold or purchased is owned collectively by multiple owners, the "owner" of the common property is the entity or governing body specifically designated in governance documents for the common property.

P. Terms starting with the letter 'P' are defined as follows:

(1) "percolation rate" means the rate of entry of water into soil as determined by a standard soil percolation test at the depth and location of the proposed soil disposal system;

(2) "permanently displayed" means, in context of septic tank legends, embossed into the tank surface or a mechanically attached, non-corrosive plate;

(3) "permit" means a written approval from the department to install, modify, or operate an on-site liquid waste system;

(4) "permittee" means any owner of a permitted on-site liquid waste system;

(5) "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, the state or any political subdivision or

agency or any other legal entity or their legal representative, agent or assign;

(6) "primary treatment" means a liquid waste treatment process that takes place in a treatment unit and allows those substances in wastewater that readily settle or float to be separated from the water being treated;

(7) "primary treatment standards" means the primary treated wastewater does not exceed 200 mg/l BOD, 100 mg/l TSS, 60 mg/l total nitrogen or 60 mg/l fats, oils and grease;

(8) "private water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water withdrawal point used to provide water to a water supply system, if such system does not have a least 15 service connections and does not serve an average of 25 individuals at least 60 days out of the year;

(9) "privy" or "outhouse" means a receptacle for non-liquid-carried human excreta allowing direct discharge to the soil;

(10) "professional engineer" or "P.E." means a professional engineer licensed under the New Mexico Engineering and Surveying Practice Act; "professional engineer" includes engineers licensed in any state of the United States for engineering related to a product design and manufacture of proprietary products;

(11) "proprietary system" means a system patented, trademarked or otherwise the intellectual property of manufacturers not in the public domain; and

(12) "public water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water intake structure used to provide water to a public water supply system for human consumption if the system served has at least 15 service connections or regularly services an average of 25 individuals at least 60 days out of the year.

Q. Terms starting with the letter 'Q' are defined as follows:

(1) "qualified homeowner" means a person who is the landowner of record residing at the property who has been provided homeowner installation training materials and who has passed an exam administered by the department.

(2) [RESERVED]

R. Terms starting with the letter 'R' are defined as follows:

(1) "real estate contract" means a contractual document creating rights and obligations between a seller and buyer of real property under which the buyer acquires equitable title to the property at the time the parties enter into the real estate contract and the seller agrees to transfer legal title to the property to the buyer at some time in the future upon buyer's fulfillment of all terms and conditions of the real estate contract;

(2) "repair" means servicing or

replacing, with like kind, mechanical or electrical parts of an approved liquid waste system, pumping of septage or making minor structural corrections to a tank or distribution box;

(3) "residential unit" means a structure that is primarily used for living quarters but does not include facilities listed in Table 201.1; and

(4) "retention/detention area" means an area on a parcel of property specifically designated and designed to capture and hold water resulting from the runoff of precipitation.

S. Terms starting with the letter 'S' are defined as follows:

(1) "sand" means:

(a) a soil separate consisting of individual rock or mineral fragments that range in diameter from 0.05 to 2.0 millimeters; or

(b) the textural class name of any soil that contains 85% or more sand and not more than 10% clay;

(2) "sand-lined trench" means a combined treatment component and disposal system consisting of 24 inches of sand, meeting the latest version of ASTM C33-03 specifications or equivalent, below a low pressure pipe disposal system;

(3) "seasonal high ground water table" means the highest level to which the upper surface of ground water may be expected to rise within 24 consecutive months;

(4) "seasonal high water flow" means the highest level that perennial or intermittent surface waters may be expected to rise as a result of a 25 year, 6-hour storm event;

(5) "secondary treatment" means a reduction of the 5-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) concentrations;

(6) "secretary" means the secretary of environment or a designated representative;

(7) "seepage pit" means a type of absorption system that uses a vertical, underground receptacle so constructed as to allow the disposal of effluent by soil absorption through the sidewalls; the maximum horizontal dimension shall not exceed the vertical dimension;

(8) "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank;

(9) "septic tank" means a liquid waste treatment unit designed to provide primary treatment and anaerobic treatment prior to disposal;

(10) "setback distance" means the distance measured by a straight horizontal line between the on-site liquid waste system, or portion thereof, and the object being considered;

(11) "shall" means mandatory;

(12) "silt" means:

(a) a soil separate consisting of particles between 0.05 and 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 80% or more silt and less than 12% clay;

(13) "soil" means sediment or other unconsolidated accumulations of mineral particles that may or may not contain organic material and that have filtering properties;

(14) "soil replacement" means replacement of existing soil with suitable soil in a new or existing disposal system site to overcome limitations of the existing soil;

(15) "split flow" means a building drain for the conveyance of wastewater that is designed to capture two waste streams, one stream from the toilet and the other stream from all other fixtures including bathtubs, showers washbasins, clothes washing machines, laundry tubs, kitchen sinks and dishwashers, for the purpose of reducing the total nitrogen discharged from the building; a "split flow" system shall consist of a holding tank for the toilet waste only and a disposal system for the remainder of the waste;

(16) "suitable soil" means a soil, whether naturally occurring or introduced, that will treat the primary effluent effectively and act as an effective filter and remove organisms and suspended solids prior to the effluent reaching ground water, bedrock or a limiting layer, and that will provide adequate transmission to prevent a failed system; suitable soils are classified Table 703.1; and

(17) "surface application" means the application of disinfected effluent to the ground surface where access is restricted by artificial or natural conditions.

T. Terms starting with the letter 'T' are defined as follows:

(1) "tertiary treatment" means additional treatment beyond secondary treatment standards, specifically, the reduction in the total nitrogen concentration;

(2) "test hole" means a hole dug in the proposed disposal field area a minimum of seven feet deep or four feet below the bottom of disposal field, whichever is greater, and a minimum of two feet wide; the "test hole" shall be sufficient to examine the soil visually for type, structure, mottling, impervious layers and other soil characteristics, and to determine the seasonal high water table level; a soil boring may be used to determine the soil characteristics and soil depth;

(3) "total design flow" means the sum of design flows for all on-site liquid waste systems and other wastewater discharges on a lot;

(4) "total nitrogen" or "TN" means the combined organic nitrogen, ammonia, nitrite and nitrate contained in the

wastewater or effluent;

(5) "total suspended solids" or "TSS" means the measurable component of solid matter suspended in water or wastewater; and

(6) "transfer" means the transfer of equitable or legal title to a property.

U. Terms starting with the letter 'U' are defined as follows: [RESERVED]

V. Terms starting with the letter 'V' are defined as follows:

(1) "vault" means a non-discharging, watertight tank designed to receive and retain non-liquid carried human excreta for periodic pumping and disposal off-site; and

(2) "variance" means an administrative procedure authorizing the issuance of a permit or use of a system that does not meet the specific requirements of 20.7.3 NMAC but which meet the intent of 20.7.3 NMAC.

W. Terms starting with the letter 'W' are defined as follows:

(1) "wastewater" means blackwater and graywater;

(2) "wastewater technical advisory committee" or "WTAC" means the wastewater technical advisory committee created by NMSA 1978 Section 9-7A-15;

(3) "watercourse" means any perennial, intermittent or ephemeral surface water conveyance channel including but not limited to a river, creek, arroyo, canyon, draw, canal or wash, or any other channel having definite banks and beds with visible evidence of the flow of water;

(4) "water(s) of the state" means surface waters of the state as defined by Paragraph (5), Subsection S of 20.6.4.7 NMAC, or its successor definition;

(5) "watertight" means not allowing water to pass in or out or as otherwise determined in 20.7.3 NMAC; and

(6) "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico; constructed wetlands are not included in this definition.

X. Terms starting with the letter 'X' are defined as follows: [RESERVED]

Y. Terms starting with the letter 'Y' are defined as follows: [RESERVED]

Z. Terms starting with the letter 'Z' are defined as follows: [RESERVED]

[20.7.3.7 NMAC - Rp, 20.7.3.7 NMAC, 9/1/13]

20.7.3.8

G E N E R A L

PROVISIONS:

A. Interpretation: The definitions in 20.7.3.7 NMAC shall be construed so as to achieve the objective of 20.7.3 NMAC.

B. Alternative resources: When guidance is sought in areas not covered by 20.7.3 NMAC, the most recent version of the following resources may provide guidance. In cases where reference to these alternative resources is proposed the department shall make the final determination of applicability.

(1) The American national standards institute (ANSI) book of codes.

(2) The American society for testing and materials (ASTM) testing manual.

(3) The international association of plumbing and mechanical officials (IAPMO) codes.

(4) The national sanitation foundation (NSF) standard 40, standard 41, and standard 46.

(5) EPA design manuals for onsite wastewater treatment and disposal systems.

(6) USDA soil survey manuals.

(7) New Mexico administrative code.

(8) Wisconsin mound soil absorption system: siting, design and construction manual, university of Wisconsin-Madison.

(9) The consortium of institutes for decentralized wastewater treatment (CIDWT), decentralized wastewater treatment glossary and installation manual.

(10) other technical publications.

C. The department field offices shall make educational materials regarding on-site liquid waste systems available to the public and to permit applicants. Information on proper maintenance of systems shall be given to new permittees. Educational materials shall be in both English and Spanish.

[20.7.3.8 NMAC - Rp, 20.7.3.8 NMAC, 9/1/13]

20.7.3.9 through 20.7.3.200 [RESERVED]

20.7.3.201 P R O C E D U R E S ; GENERAL REQUIREMENTS:

A. Every owner shall be responsible for the storing, treating and disposing of liquid waste generated on that property. Every owner shall be responsible for ensuring that the liquid waste system on that property and any excavation related to the liquid waste system do not pose a public safety hazard.

B. No person shall discharge untreated liquid waste except into a permitted and approved enclosed system, a permitted and approved liquid waste treatment unit or a public sewer system, except for the discharge of graywater

pursuant to 20.7.3.810 NMAC. All liquid waste systems installed in accordance with a liquid waste permit issued by the department prior to July 1, 2012 shall be deemed to have operational approval. No person shall discharge liquid waste or effluent into a cesspool or effluent disposal well.

C. No person shall discharge effluent from a liquid waste treatment unit except through a permitted and approved liquid waste disposal system or to a permitted public sewer system. No person shall discharge effluent from a liquid waste treatment unit to a cesspool or effluent disposal well.

D. No person shall install, have installed, modify or have modified, own, operate or use an on-site liquid waste system that, by itself or in combination with other on-site liquid waste systems, may cause a hazard to public health or degrade any body of water. All on-site liquid waste systems shall be installed, operated and maintained in accordance with the permit and applicable regulations.

E. All residential and commercial units utilizing an on-site liquid waste system shall connect to a public sewer upon availability and if required in accordance with the local authority that has jurisdiction. A public sewer shall be deemed available when the public sewer has capacity and is located in any thoroughfare, right-of-way or easement abutting the lot on which the residential or commercial unit is located. The on-site liquid waste system shall be properly abandoned in accordance with 20.7.3.307 NMAC within 30 days of connection to the public sewer.

F. The type of on-site liquid waste system shall be determined on the basis of location, lot size, soil and site characteristics. The system, except as otherwise approved, shall consist of a liquid waste treatment unit and associated disposal system.

G. An on-site liquid waste system shall be located wholly on the same lot, which is the site of the source or sources served by the on-site liquid waste system.

H. A privy may be used for the disposal of human excreta and toilet paper, but not for the disposal of other liquid wastes.

I. On-site liquid waste systems, other than holding tanks, receiving waste from recreational vehicles (RVs) shall provide treatment of the waste to concentrations equal to or less than primary treatment standards as defined in Paragraph (7), Subsection P of 20.7.3.7 NMAC, if necessary, prior to discharging to a conventional disposal system. Monitoring of the effluent may be required in accordance with 20.7.3.901 NMAC. Existing permitted on-site liquid waste systems receiving waste from recreational vehicles (RVs) shall

continue to be authorized to operate. Upon modification of these existing systems, the system shall be required to provide the level of treatment of the waste identified above. This subsection shall not apply to homeowners who occasionally empty waste from one personal RV into the on-site liquid waste system serving their residence, provided that the RV is not used as a permanent living quarters.

J. On-site liquid waste systems permitted, but not installed, prior to the effective date of 20.7.3 NMAC shall be installed in accordance with the regulations in effect at the time of the permit issuance, provided that the installation of the system shall be completed within one year of the effective date of 20.7.3 NMAC.

K. Existing on-site liquid waste systems shall meet the regulations in effect at the time of their initial installation or subsequent modification or the current regulation, whichever is less stringent, unless otherwise noted in this regulation.

L. Nothing contained in 20.7.3 NMAC shall be construed to prevent the department from requiring compliance with more stringent requirements than those contained herein, where the department finds that such more stringent requirements are necessary to prevent a hazard to public health or the degradation of a body of water. The following parameters may be considered when determining if a body of water is potentially vulnerable to degradation from liquid waste effluents, and if more stringent requirements may be necessary to prevent such degradation:

(1) a water-table aquifer (includes both unconfined and semi-confined conditions) with a vadose zone thickness of 100 feet or less containing no soil or rock formation that would act as a barrier to saturated or unsaturated wastewater flow;

(2) sites within 1/4 mile of a known groundwater plume of anthropogenic anoxic or nitrate contamination caused by migration through undisturbed vadose zone, provided that the site overlies the same aquifer;

(3) an aquifer overlain by fractured bedrock;

(4) an aquifer in karst terrain; and

(5) a gaining stream or other body of water adversely affected by nutrients from liquid waste systems.

M. Upon written request, the department shall provide a letter of determination stating whether or not more stringent requirements may be imposed on a lot or parcel of land. This determination shall be valid for one year. The department shall issue the determination letter within 10 working days of receipt of the written request. This letter of determination in no way neither waives or precludes an applicant's regulatory requirements under this part nor predetermines the regulatory

requirements of this part when obtaining a permit.

N. The secretary, or a designated representative, upon presentation of proper credentials and with consent or with an administrative search warrant:

(1) shall have the right of entry to any property on which a permitted or unpermitted on-site liquid waste system regulated by 20.7.3 NMAC exists or is required for the limited purpose of inspecting the liquid waste system or to determine compliance with these regulations or permit conditions; failure to provide reasonable access for the purpose of inspecting a liquid waste system or to determine compliance with these regulations or permit conditions shall be cause for revocation or suspension of a permit;

(2) shall have access to and may copy any record required to be established and maintained by these regulations or permit conditions; failure to provide reasonable access to or copies of any record required to be established and maintained by these regulations or permit conditions shall be cause for revocation or suspension of a permit; and

(3) may obtain any samples required to determine compliance with 20.7.3 NMAC or permit conditions; failure to provide reasonable access to facilities for the purpose of obtaining samples shall be cause for revocation or suspension of a permit.

O. Eligibility for permitting under 20.7.3 NMAC, which restricts effluent flow to 2000 gallons per day or less, shall be determined as follows:

(1) Wastewater flows from residential sources shall be calculated at 80% of the design flow as determined according to Subsection P of 20.7.3.201 NMAC. Multiple families dwelling unit wastewater flows shall be calculated as the sum of wastewater flows for each single family unit included.

(2) Wastewater flows from residential and nonresidential sources shall be based on Table 201.1 or generally accepted references, such as the New Mexico plumbing code or the EPA design manuals for on-site wastewater treatment and disposal.

(3) Wastewater flows for residential and nonresidential sources also may be based on:

(a) professional engineering design calculations that bear the seal and signature of a professional engineer licensed in New Mexico, pursuant to the New Mexico engineering and surveying practice act and the rules promulgated under that authority; such calculations shall be reviewed by a department engineer, as appropriate; or

(b) the submittal of actual metered water use or effluent flow meter data; to use

actual meter data to establish wastewater flow, the applicant must present at least one year of existing meter data collected within the previous five years; calculate the daily wastewater flow according to the following formula: $A \div B = Q$, where **A** = highest quarterly totalized meter reading in gallons for the minimum one year period; **B** = total number of days in highest metered quarter; **Q** = daily wastewater flow in gallons per day.

(c) Meter data or certification by a professional engineer shall not be used to determine wastewater flow on exclusively residential properties consisting of less than five residential units.

(d) If meter data is not representative of the actual wastewater discharge, as determined by the department, the applicant may be required to submit additional meter data or the department may disallow the use of meter data where its use would result in a gross misrepresentation of the wastewater discharge.

(e) The department may require a calibration of the meter used for determining water or wastewater flow and may disallow the use of inaccurate meter data. Applicants may be required to make future records of metered flow available for inspection by the department.

(f) If a permit is issued and there are meter records for any quarter that indicate the daily wastewater flow exceeds 2000 gallons per day, quarterly meter records for the following two quarters shall be submitted to the department within 30 days of becoming available to the permittee. If meter data or other information available to department indicates the average daily wastewater flow has exceeded 2000 gallons per day, the department may void the permit and refer the facility to the ground water quality bureau. The department may require a tamper-proof type meter be installed to verify that future wastewater flows do not exceed 2000 gallons per day.

P. Determining treatment and disposal design flow:

(1) for residential sources, the design flow shall be based on the number of bedrooms as follows:

(a) 1 bedroom = 150 gallons per day;

(b) 2 bedrooms = 300 gallons per day;

(c) 3 bedrooms = 375 gallons per day;

(d) 4 bedrooms = 440 gallons per day;

(e) 5 bedrooms = 500 gallons per day; and

(f) each additional bedroom = 50 gallons per day;

(g) design flows for multiple family dwelling units shall be calculated as the sum of design flows for each single

family unit included.

(2) Where nonresidential wastewater flow is calculated based upon Table 201.1 or generally accepted references, no design factor is necessary to determine the design flow except as noted in Paragraph (3) below.

(3) For residential and nonresidential facilities with highly variable flows not certified by a professional engineer, a design factor greater than 1.5 may be required to be applied to determine the design flow. Alternatively, flow equalization or other methods of accommodating peak flows may be used with department approval.

(4) Where residential and nonresidential wastewater flow is certified by a professional engineer, no design factor is necessary to determine the design flow, unless deemed appropriate by the professional engineer.

(5) Where residential or nonresidential wastewater flow is determined using existing meter data and calculated in accordance with Subparagraph (b) of Paragraph (3) of Subsection O of 20.7.3.201 NMAC, a design factor of 1.5 shall be applied to the daily average flow to determine design flow. An additional peaking factor may be required in accordance with Paragraph (3) above.

(6) If the design flow could increase significantly beyond existing meter data due to increased occupancy or facility size, the department may require that additional area be available for future expansion of both the treatment and disposal systems.

Table 201.1: Established liquid waste design flow rates

TYPE OF OCCUPANCY	GALLONS PER DAY
1. Airport, Bus Terminal, Train Station	20 per employee 5 per passenger
2. Beauty & Barber Shop	75 per service chair
3. Bowling alleys (snack bar only)	75 per lane
4. Bed and Breakfast	150 first bedroom 100 each additional bedroom
5. Camps: campground with central comfort station with flush toilets, no showers day camps (no meals served) summer and seasonal	35 per person 25 per person 15 per person 50 per person
6. Churches (Sanctuary) with kitchen waste	2 per seat 7 per seat
7. Dance hall	5 per person
8. Doctor and Dentist Office	250 per practitioner, 15 per employee
9. Factories, excluding industrial waste: per 8-hour shift no showers with showers cafeteria, add	25 per employee 35 per employee 5 per employee
10. Food Operations: Restaurants operating 16 hours or less per day Restaurants operating more than 16 hours per day Bar, cocktail lounge add per pool table or video game Carry out only, including caterers add per 8-hour shift Food outlets only add for deli add for bakery add for meat department add per public restroom	40 per seat 60 per seat 20 per seat 15 each 50 per 100 sq ft floor space 20 per employee 10 per 100 sq ft floor space 40 per 100 sq ft floor space 40 per 100 sq ft floor space 75 per 100 sq ft floor space 200
11. Hotels, Motels, Lodges laundries, lounges and restaurants calculated separately	60 per bed
12. Institutions (resident) nursing homes rest homes	75 per person 125 per person 125 per person
13. Laundries self-service (minimum 10 hours/day) commercial	50 per wash cycle per manufacturer's specifications
14. Offices	20 per employee per 8-hour shift
15. Parks: picnic park - toilets only	20 per parking space

16. Recreation Vehicles (RV) Park without water hookup with water and sewer hookup RV dump stations	75 per space 100 per space 50 per RV
17. Schools - staff and office elementary and day care intermediate and high boarding, total waste gym and showers, add with cafeteria, add	20 per person 15 per student 20 per student 100 per person 5 per student 3 per student
18. Service stations and convenience stores uni-sex restrooms	400 per toilet 800 per toilet
19. Stores public restrooms	20 per employee 10 per 100 sq ft. floor
20. Swimming and bathing places, including spas and hot tubs, public	10 per person
21. Theaters, auditoriums Drive-ins	5 per seat 10 per space
22. Veterinary Clinic add add	250 per practitioner 15 per employee 20 per kennel, stall, or cage

Liquid waste generated by the occupancies above, that exceeds the concentrations in the definition of domestic liquid waste, shall require treatment to primary treatment standards as defined in Paragraph (7), Subsection P of 20.7.3.7 NMAC prior to discharging to a conventional disposal system.

Q. The minimum liquid capacity of a septic tank shall be determined as follows:

- (1) for residential units, the liquid capacity shall be based on the number of bedrooms using Table 201.2; and
- (2) for commercial units, the liquid capacity shall be based on the number of plumbing fixture units using Table 201.2; or
- (3) if based on flows calculated from Table 201.1 or from estimated design flows pursuant to Paragraphs (2), (3), (4) or (5) of Subsection P of 20.7.3.201 NMAC, the minimum liquid capacity shall be 2.5 times the design flow, whichever is greater.

Table 201.2: Capacity of septic tanks

Single family dwellings, number of bedrooms	Other uses maximum fixture units*	Minimum septic tank capacity in gallons served
1	10	750
2 - 3	12	1000
4	15	1200
5 - 6	20	1500
7 - 9	27	2000
	29	2250
	32	2500
	35	2750

* 100 fixture units or less are equal to 31.1 gallons per fixture unit.

R. Waste from a water softener unit shall comply with the following.

- (1) Softener waste may be discharged to a conventional treatment unit. If the waste is not discharged to the treatment unit, the waste may be disposed in accordance with other applicable regulations.
- (2) For new construction utilizing an advanced treatment system, the softener waste shall not be discharged to the advanced treatment unit. The softener waste shall bypass the advanced treatment unit and discharge directly to the drainfield or be disposed of in some manner acceptable to the department and meets all other state and local regulations.
- (3) If a water softener unit is installed at an existing residential or commercial unit utilizing an advanced treatment unit:
 - (a) the current liquid waste permit shall be amended to reflect the installation;
 - (b) a written notice shall be submitted to the maintenance service provider of the advanced treatment unit; and
 - (c) either a demand-initiated regeneration control device (DIR device) shall be installed or the softener waste shall bypass the advanced treatment unit.
- (4) If an advanced treatment unit is to be installed at an existing residential or commercial unit with an existing water softener, the installation shall be done in accordance with the permit.

[20.7.3.201 NMAC - Rp, 20.7.3.201 NMAC, 9/1/13]

A. Prior to the modification of an established on-site liquid waste system, a permit application must be submitted in accordance with 20.7.3.401-405 NMAC. The portion of the system requiring modification shall be in accordance with the current version of 20.7.3 NMAC except as noted in Subsections C and D of 20.7.3.202 NMAC below.

B. R e p l a c e m e n t components for on-site liquid waste systems shall be of materials approved by the department.

C. On-site liquid waste systems modified after the effective date of this regulation:

(1) shall meet the lot size requirements of the regulations in effect at the time of the initial installation or most recent permitted modification; and

(2) the total lot flow shall be increased only if all current standards and requirements are met pursuant to 20.7.3 NMAC. More stringent requirements may be required pursuant to Subsection L of 20.7.3.201 NMAC.

D. The septic tank need not be replaced as part of the modification if the tank is structurally sound, watertight, constructed of approved materials, is function properly and if the existing tank has a liquid capacity within one tank size of the capacity required by Subsection Q of 20.7.3.201 NMAC. In addition, the tank shall be pumped and the inlet and outlet baffles or sanitary tees checked and repaired or replaced, if needed.

E. Upon modification of any part of the system, an approved effluent filter shall be installed in accordance with Subsection H of 20.7.3.502 NMAC and access risers shall be installed over the tank inlet and outlet access openings in accordance with Subsection D of 20.7.3.502 NMAC.

F. Upon the issuance of the permit to modify and the subsequent inspection and approval of the modification, a previously unpermitted system shall be considered permitted and authorized to operate.

[20.7.3.202 NMAC - Rp, 20.7.3.202 NMAC, 9/1/13]

20.7.3.203 PROCEDURES; CONSTRUCTION INSPECTIONS AND TESTING:

A. The department may perform site inspections prior to making a decision on a permit application or variance petition, during construction or modification of the system and after completion of the system. The department may require test holes to be excavated and documentation to be provided for purposes of determining soil types, depth of soil and water table depths. In areas where soil conditions are

well characterized and groundwater depth is documented, test holes may be waived. The department may collect samples of soil, liquid waste and water, including water from wells, to determine compliance with 20.7.3 NMAC.

B. Upon granting the permit or variance application, if the department determines an inspection is necessary, the department shall indicate the point in the construction process where the first construction inspection is to be scheduled or in accordance with Subsection A of this section.

(1) The person doing the work authorized by the permit shall notify the department, orally or in writing, to schedule an inspection time, a minimum of two working days prior to the inspection. The department may assess a re-inspection fee if the work is not ready for inspection at the time of the scheduled inspection. In the event the inspection is not conducted within one hour after the appointed time of inspection, the installer shall take photographs that accurately identify the site and features of the installation and proceed with the installation. Copies of such photographs shall be submitted to the department.

(2) All homeowner installed systems shall be inspected by the department.

(3) If an inspection results in the issuance of a notice of non-approval, a re-inspection shall be required. The person shall notify the department as indicated above.

(4) An installer specialist doing the work authorized by the permit shall notify the department, orally or in writing, of the day and time the work will be ready for inspection. Such notification shall be given at least two working days, calculated to the hour, prior to the time of the requested inspection. If the department inspector does not arrive at the site within one hour of the notified time of completion, the installer specialist shall take digital photographs of all components of the installation, shall complete an inspection form provided by the department and may complete the installation. The installer specialist shall provide electronic copies of the photographs and inspection form to the department within five working days.

C. System components shall be properly identified as to manufacturer and shall meet all specifications specified in 20.7.3 NMAC.

D. The department may require testing to verify watertight construction and initial functioning of any liquid waste system.

(1) Liquid waste treatment units, pump stations or pump chambers shall be considered watertight by successfully completing one of the following testing procedures.

(a) Water pressure testing: Seal the unit, fill with water and let stand for 24 hours. Refill the unit. The unit is approved if the water level is held for 60 minutes.

(b) Vacuum testing: Seal the unit and apply a vacuum to two inches (50mm) of mercury. The unit is approved if the vacuum is held for 60 minutes.

(2) The department may require a flow test be performed through the system to the point of effluent disposal. All lines and components shall be watertight. Capacities, required air space and fittings shall meet the requirements of 20.7.3 NMAC.

(3) The department may require operational testing of advanced treatment components to verify initial functioning.

[20.7.3.203 NMAC - Rp, 20.7.3.203 NMAC, 9/1/13]

20.7.3.204 through 20.7.3.300 [RESERVED]

20.7.3.301 STANDARDS; LOT SIZE REQUIREMENTS:

A. The requirements of this section apply to all conventional treatment systems that discharge to the soil. Compliance with the requirements of this section shall be based on the total design flow for the lot. Water conservation devices or demonstrated actual flows shall not be used to reduce the requirements of this section. For the purposes of 20.7.3 NMAC, lot sizes shall be calculated to the nearest hundredth (0.01) acre.

B. The date of record for a lot shall be considered to be either:

(1) the date of legal recording in the county clerk's office or validation by other means associated with the most recent change in lot size or boundaries; or

(2) for those lots in subdivisions having received final approval from governments having jurisdiction therein prior to February 1, 1990, such date of record shall be two and one-half years from the date of final government approval or July 1, 1992, whichever occurs first.

C. A conventional treatment system shall not be installed on a lot sized smaller than 0.75 acre, where there is not an established on-site liquid waste system, except as otherwise provided in Subsection F of 20.7.3.301 NMAC. The size of a lot shall be the total area of the lot plus or minus the area of any liquid waste disposal easements granted to or by another lot, respectively. The design flow for a conventional treatment system shall not exceed 500 gallons per day per acre. For total design flows that exceed the allowable flow or for lots that do not meet the minimum lot size, the total nitrogen discharged to the lot shall be reduced in accordance with Subsection B of 20.7.3.603 NMAC.

D. On-site liquid waste

systems installed prior to the effective date of 20.7.3 NMAC shall meet the lot size requirements of the regulations in effect at the time of their initial installation or if there has been a permitted modification, the regulations in effect at the time of the most recent prior permitted modification.

E. Table 301.1 lists the minimum lot sizes required for typical flow rates for conventional treatment systems for lots with a date of record of February 1, 1990 or later.

Table 301.1

TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE (acres)
375 or less	0.75
450	0.90
600	1.20
750	1.50
1125	2.25
1500	3.00
1875	3.75
2000	4.00

F. The department may issue permits for lots not complying with Subsection C of 20.7.3.301 NMAC for areas the department has identified and mapped where groundwater is not at risk from nitrogen loading from on-site liquid waste systems. The following hydrogeologic conditions may be considered when determining if groundwater is not at risk:

- (1) groundwater does not exist;
- (2) the uppermost groundwater contains a total dissolved solids concentration greater than 10,000 milligrams per liter;
- (3) the uppermost groundwater occurs under confined conditions;
- (4) the uppermost groundwater occurs at a depth between 400 and 600 feet with one or more geologic strata in the vadose zone that may act as a capillary barrier; and
- (5) the uppermost groundwater occurs at a depth greater than 600 feet.

In areas that have not been identified and mapped by the department, the applicant must demonstrate one of the above conditions exists prior to the issuance of a permit.

G. The following Table 301.2 summarizes the minimum lot size requirements, in acres, and permissible design flows in effect prior to February 1, 1990 and is for the purpose of determining the requirements existing at the time of initial installation or most recent permitted modification.

Table 301.2

	RECORD DATE									
	01/01/60 to 11/01/73		11/01/73 to 09/07/79*		09/07/79 to 03/01/80		03/01/80 to 11/09/85		11/09/85 to 02/01/90	
	Minimum Lot Size	Soil Group **	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	
OFF-SITE WATER**	0.25***	A	0.50	0-1000	0.50	0-375	0.33	0-375	0.33	
		B	0.75	1000-1500	1.00	376-1000	0.50	376-750	0.50	
		C	1.00	1500-2000	1.25	1000-1500	1.00	750-1125	1.00	
		D	****			1501-2000	1.25	1126-1500	1.25	
								1501-2000	1.75	

ON-SITE WATER**	0.50***	A	0.75	0-1000	0.75	0-1000	0.75	0-375	0.75
		B	1.00	1000-1500	1.25	1000-1500	1.25	376-750	1.50
		C	1.25	1500-2000	1.70	1501-2000	1.70	750-1125	2.00
		D	****					1126-1500	2.75
								1501-2000	3.50

(1) * The maximum total design flow was 1,000 gpd for the lot sizes shown.

(2) ** See Subsection H of 20.7.3.301 NMAC.

(3) *** These requirements applied to lots in subdivisions that were required at the time of subdivision to obtain state health department review and approval.

(4) **** No on-site liquid waste disposal to soil allowed.

(5) NOTE: Roadways were excluded from figuring lot sizes from 11/09/85 to 9/1/13.

H. The following Table 301.3 lists the soil types for lot size determinations for the period November 1, 1973 to September 7, 1979: The minimum lot size required for the location of an individual liquid waste disposal system is determined by the most limiting soil group under which any soil characteristic falls.

Table 301.3

SOIL CHARACTERISTICS	A Slight Limitations	B Slight Limitations	C Moderate Limitations	D Severe Limitations
1. SOIL DEPTH (depth to bedrock, in feet)	More than 6 and	More than 6 and	4 - 6 or	Less than 4 or
2. PERCOLATION RATE (rate of percolation of water into soil in minutes per inch)	0 - 15 and	16 - 30 and	31 - 60 or	More than 60 or
3. SEASONAL WATER TABLE (depth to shallowest water table during the year, in feet)	More than 12 and	More than 12 and	4 - 12 or	Less than 4 or
4. SLOPE (incline of the land surface, in percent)	0 - 8 and	0 - 8 and	8 - 25 or	More than 25 or
5. FLOODING POTENTIAL (overflow frequency, in years)	None	None	No more than 1 in 25	More than 1 in 25

I. If the size or boundaries of a lot with an existing on-site liquid waste system are changed so that the total design flow for the lot exceeds the total design flow limitation provided for in Subsection C of 20.7.3.301 NMAC, the permit for the system shall be void.

J. If the size or boundaries of a lot with an existing on-site liquid waste system are changed so that the total design flow for the lot does not exceed the total design flow limitation provided for in Subsection C of 20.7.3.301 NMAC, an amendment to the existing permit shall be submitted.

[20.7.3.301 NMAC - Rp, 20.7.3.301 NMAC, 9/1/13]

20.7.3.302 STANDARDS; SETBACK REQUIREMENTS:

A. On-site liquid waste systems shall be located to meet setback distances, in feet, specified in the following Table 302.1. Setback distances apply to any part of the on-site liquid waste system.

Table 302.1: Minimum setback and clearance requirements

From:	To:	Building Sewer	Treatment Unit*	Disposal Field	Seepage Pit
Property lines		clear	5 ft.	5 ft.	8 ft.
Building or structure		2 ft.	5 ft.	8 ft.	8 ft.
Distribution box		--	--	5 ft.	5 ft.
Disposal field		--	10 ft.*****	4 ft*****	10 ft.
Seepage pit		--	10 ft.	10 ft.	12 ft.
Drinking water line*****:					
- private		1 ft.	10 ft.	10 ft.	10 ft.

- public	10 ft.	10 ft.	10 ft.	10 ft.
Drinking water source/well:				
- private	50 ft.	50 ft.	100 ft.	100 ft.
- public	50 ft.	100 ft.	200 ft.	200 ft.
Irrigation well	50 ft.	50 ft.	100 ft.	100 ft.
Lined canals	--	10 ft.**	10 ft.**	10 ft.**
Unlined canals, drainage ditches	--	15 ft.**	25 ft.**	25 ft.**
Arroyos	--	15 ft.**	25 ft.**	25 ft.**
Other watercourses,				
Waters of the state	--	50 ft.	100 ft.	100 ft.
Retention/detention area or flood irrigation areas	--	15 ft.	15 ft.	15 ft.
Seasonal high water table, bedrock and other impervious layers***	--	--	4 ft. to bottom of system	4 ft. to bottom of system

- (1) * Applies to privy pits, enclosed systems, other liquid waste treatment units.
- (2) ** Plus depth of channel.
- (3) *** Unlined privy pits shall provide clearance of at least four feet.
- (4) **** Plus two feet for each additional foot of depth below the invert of the distribution pipe.
- (5) ***** May be five feet when Schedule 40 PVC/DWV pipe is used.
- (6) ***** Or applicable plumbing code.

B. Setback distances to watercourses, canals and arroyos shall be measured from the edge of the defined bank to the on-site liquid waste system component. Setback distances to artificially controlled lakes or reservoirs shall be measured from the closest projected shoreline at the maximum controlled water level.

C. Multiple liquid waste systems, each with an actual design flow of 2000 gallons per day (gpd) or less, may be permitted by the department even if they are located on a single lot provided that the disposal systems are set back from each other by a distance equal to the sum of two radii of adjacent circular areas, each circular area representing certain boundaries of a disposal system. The center of each circle is located at a point nearest to the outer boundary of each adjacent liquid waste disposal system. The radius for each circle may be calculated utilizing Table 302.2 below based on the number of bedrooms, or by using the following formula: $r = \sqrt{(A/\pi)}$ or $r^2 = A/\pi$, where:

- (1) "r" means radius of the circular area measured in feet;
- (2) " $\sqrt{\quad}$ " means square root;
- (3) "A" means the area of a circle in square feet, calculated as follows:
 - (a) A = (design flow, gpd) x (1 acre/500 gpd) x (43,560 square feet/acre); or
 - (b) A = (design flow, gpd) x 87.12; and
- (4) π (pi) = 3.1416.

D. Table 302.2 below provides examples of radii for design flows based on number of bedrooms only. Radii for other design flows shall be calculated with the formula above. Separation distances to facilities permitted by other entities, such as the ground waste quality bureau, may be considered on a case by case basis.

Table 302.2: Radii for calculating minimum distance between systems on a large parcel

No. of bedrooms	Actual flow, gpd	Minimum acreage	Radius of A, feet
1	150	0.75	102.0
2	300	0.75	102.0
3	375	0.75	102.0
4	440	0.88	110.5
5	500	1.0	117.8
6	550	1.1	123.5

E. In order to meet the criteria of this section, the disposal system may be moved to meet the minimum separation distance. This may require the use of an effluent pump system. Alternatively, if the minimum separation distance cannot be achieved, tertiary treatment may be installed. Other methods of providing equal protection will be considered on a case by case basis by the department.

F. Lots with existing liquid waste systems totaling less than 2000 gallons per day may be permitted to add additional liquid waste systems provided the individual systems do not exceed 2000 gallons per day, meet the setback requirements to the existing systems as allowed above and meet lot size requirements in Subsection C of 20.7.3.301 NMAC.

G. If the department discovers that a private drinking water well has been drilled at a location that is not set back from an existing liquid waste system by the distance required in Table 302.1, the department shall:

- (1) send a certified letter to the owners of the water well and liquid waste system that identifies the subject water well and liquid waste system, and describes the potential hazards created by insufficient setback;
- (2) provide the office of the state engineer with a copy of the letter; and
- (3) not administer the water well setback requirements in Table 302.1 pertaining to the subject well provided that the liquid waste system remains in compliance with 20.7.3 NMAC, and is not modified.

**20.7.3.303 STANDARDS ;
CLEARANCE REQUIREMENTS:**

A. Seasonal high ground water levels and seasonal high water flows shall be determined by the department either by direct observation, by the presence of mottling in the soil profile, by reliance upon the findings of a qualified professional or upon published scientific material, well records or other sources acceptable to the department. The department may adjust the measured water table to compensate for factors such as season, drought, irrigation or flooding. Compliance with seasonal high ground water table and seasonal high water flow clearances in this section shall be based on the best-documented evidence available to the department at the time of installation or modification.

B. No conventional on-site liquid waste system shall discharge liquid waste into the soil where the vertical clearance from the bottom of the absorption area to seasonal high ground water table, impervious formation or other limiting layer is less than four feet of suitable soil. A reduction in this clearance may be allowed with appropriate advanced treatment or alternative disposal.

C. Unlined privy pits shall provide a clearance of no less than four feet of suitable soil from the bottom of the excavation to the seasonal high ground water table, the seasonal high water flow, impervious formation or other limiting layer. [20.7.3.303 NMAC - Rp, 20.7.3.303 NMAC, 9/1/13]

**20.7.3.304 STANDARDS ;
PROHIBITIONS:**

A. No person shall introduce into an on-site liquid waste system household hazardous wastes, solvents, fertilizers, livestock wastes, vehicle and equipment wash water or other materials of a composition or concentration not generally considered liquid waste as defined in 20.7.3 NMAC.

B. Liquid waste treatment additives shall not be used as a means to reduce the frequency of proper maintenance and removal of septage from a treatment unit.

C. Effluent shall not be stored with any other source of water, either potable or not-potable. [20.7.3.304 NMAC - Rp, 20.7.3.304 NMAC, 9/1/13]

**20.7.3.305 STANDARDS ;
WASTE INTERCEPTORS:**

A. When liquid wastes are discharged containing excessive amounts of grease, garbage, flammable wastes, sand or other ingredients that may affect the operation of an onsite liquid waste system, an interceptor for such wastes shall be

installed in-line prior to the liquid waste treatment unit.

B. Installation of interceptors shall require a permit from the authorized building department.

C. Waste interceptors shall be maintained in accordance with manufacturer's specifications and require a maintenance contract to be in effect at all times.

[20.7.3.305 NMAC - Rp, 20.7.3.305 NMAC, 9/1/13]

20.7.3.306 STANDARDS ;

SEPTAGE: Disposal of septage shall occur at a permitted facility with the knowledge and consent of the facility owner, and shall not cause a hazard to public health nor degrade a body of water. Transport and disposal of septage shall be in conformance with applicable federal, state and local regulations. Septage pumpers shall keep customer invoices and disposal records for three years and shall, upon written request by the department, make such records available to the department for inspection.

[20.7.3.306 NMAC - Rp, 20.7.3.306 NMAC, 9/1/13]

**20.7.3.307 STANDARDS ;
ABANDONED SEWERS AND ON-SITE
LIQUID WASTE SYSTEMS:**

A. Every abandoned building sewer, or part thereof, shall be plugged or capped within five feet of the property line using a cap or plug prescribed by the New Mexico plumbing code.

B. Every cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit that has been abandoned or has otherwise been discontinued from further use or to which no waste or building sewer from a plumbing fixture is connected shall have the liquid waste pumped there from and properly disposed. The bottom of the unit shall be opened or ruptured, or the entire unit collapsed so as to prevent the unit from retaining water. The unit shall be completely filled with earth, sand, gravel, concrete or other approved material.

C. The top cover or arch over the cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit shall be removed or collapsed before filling and the filling shall not extend above the top of the vertical portions of the sidewalls or above the level of any outlet pipe until inspection or authorization by the department. After such inspection or authorization, the cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit shall be filled to the level of the top of the ground.

D. Where on-site treatment systems are abandoned consequent to connecting any premises with a public sewer, the permittee making the connection

shall fill all abandoned treatment units as required by the department within 30 days from the time of connection.

[20.7.3.307 NMAC - Rp, 20.7.3.307 NMAC, 9/1/13]

20.7.3.308 through 20.7.3.400

[RESERVED]

**20.7.3.401 PERMITTING ;
GENERAL REQUIREMENTS:**

A. No person shall install or have installed a new on-site liquid waste system or modify or have modified an existing on-site liquid waste system, unless that person obtains a permit issued by the department, including payment of the permit fee, prior to construction of such installation or modification. Failure to obtain the required permit may result in the initiation of enforcement actions by the department.

B. No person shall construct or modify a residential or commercial unit on, or transport a residential or commercial unit onto, a lot for which an on-site liquid waste system is required unless the department has issued an on-site liquid waste system permit prior to such construction, modification or transportation.

C. No person shall construct, install or modify an on-site liquid waste system unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division, except that a qualified homeowner may install or modify permitted septic tanks and conventional trench or bed disposal fields. Obtaining a permit from the department for the installation or modification of an on-site liquid waste system does not relieve any person from the responsibility of obtaining any other approval, license or permit required by state, city or county regulations or ordinances or other requirements of state or federal laws.

D. A permit is not required for graywater discharges or for systems designed for the discharge of graywater that meet the requirements of 20.7.3.810 NMAC.

E. An applicant seeking a permit shall do so by submitting an application to the field office of the department having jurisdiction for the area where the system is to be installed or modified. The application shall be:

(1) made on a form provided by the department;

(2) accompanied by the recorded deed or other recorded description and such other relevant information as the department may reasonably require to establish lot size, boundaries, date of record and ownership; and

(3) signed by the applicant or their authorized representative.

F. The department shall

require complete and accurate information before a permit is issued for an on-site liquid waste system.

G. The department shall deny the application if the proposed system will not meet the requirements of 20.7.3 NMAC.

H. The department shall maintain a file of all permits issued and applications denied. The file shall be open for public inspection.

I. All systems shall be installed, operated and maintained in accordance with the permit and applicable regulations.

J. **U n p e r m i t t e d** conventional systems installed or modified prior to February 1, 2002 may be issued a certificate of registration for continued operation if, after evaluation by the department or by an installer specialist:

(1) the treatment unit is pumped by a seepage pumper hired by the system owner and the unit is determined to be watertight, is functioning properly and the tank has a liquid capacity within one tank size of the capacity required in Subsection Q of 20.7.3.201 NMAC;

(2) the liquid waste system appears to meet setback and clearance requirements based on a non-intrusive evaluation;

(3) the disposal system appears to be functioning properly;

(4) meets the lot size requirements of the regulation in effect at the time of the initial installation;

(5) the system does not constitute a public health or safety hazard; and

(6) the appropriate permit fee is paid for the system installed.

If any of the above conditions are not met, a certificate of registration cannot be issued and an application for modification pursuant to 20.7.3.202 NMAC must be submitted.

K. **U n p e r m i t t e d** conventional systems installed or modified on or after February 1, 2002 may be permitted if:

(1) the treatment unit and the disposal system are adequately exposed to allow full inspection by the department to determine all relevant aspects of construction and materials, including, but not limited to: soil type; pipe size, type and material; proper placement of aggregate and cover; and proper trench size, slope and spacing;

(2) the on-site liquid waste system is determined, upon inspection by the department, to meet all requirements of 20.7.3 NMAC; and

(3) the appropriate permit fee is paid; and

(4) at the discretion of the department, an administrative penalty is paid in accordance with Environmental Improvement Act, Chapter 74, Article 1 NMSA 1978.

L. If the department finds that specific requirements in addition to, or more stringent than, those specifically provided in 20.7.3 NMAC are necessary to prevent a hazard to public health or the degradation of a body of water, the department shall issue permit conditions with more stringent requirements or additional specific requirements. Such additional or more stringent requirements may apply to system design, siting, construction, inspection, operation and monitoring.

M. The installation or modification of an on-site liquid waste system shall be in accordance with the permit and all regulatory requirements of 20.7.3 NMAC. Any change from the permitted installation or modification, including a change of installer, must receive department approval prior to implementation. An amendment of the permit shall be submitted within seven days of the completion of the installation.

N. No person shall operate or use an on-site liquid waste system until the department has granted final approval of the system after installation or modification of the system is completed. No person shall occupy a newly constructed or transported dwelling for which an on-site liquid waste system is required until the department has granted such final approval and, if applicable, until the governmental body with authority to regulate construction has granted an occupancy permit. The department shall not grant final approval if the system as installed or modified does not meet the requirements of 20.7.3 NMAC.

O. The department may cancel a permit if the installation or modification of the on-site liquid waste system has not been completed within one year after issuance or if the department determines that material information in the application is false, incomplete or inaccurate and that the correct information would have resulted in the department denying the original application. If a permit is canceled, the department shall notify the permittee of the decision in writing and the reason for cancellation and appropriate regulations cited.

P. Only the permittee may request that the department cancel a permit. The request must be made in writing.

Q. An installer whose New Mexico construction industries division license number is on a permit approved by the department for construction may, upon written notice to both the permittee and to the department, withdraw from the permit. Upon installer withdrawal, the permit approval shall be suspended until the permittee amends the permit either to include another licensed installer or to reflect approval as a qualified homeowner in accordance with Subsection A of 20.7.3.904 NMAC. Construction of the liquid waste

system shall not proceed until the permit amendment is approved by the department. If the contractor withdraws after construction has commenced, the owner shall eliminate any public safety hazards posed by open treatment systems, excavations or other conditions related to unfinished construction.

R. A permittee may amend the permit to change the installer without installer withdrawal, provided that the permittee provides written notice to the installer.

[20.7.3.401 NMAC - Rp, 20.7.3.401 NMAC, 9/1/13]

20.7.3.402 PERMITTING ; CONVENTIONAL TREATMENT AND DISPOSAL SYSTEMS:

A. For liquid waste systems utilizing conventional treatment and conventional disposal, the department shall require the following information to be included with the application.

(1) A detailed site plan, completely dimensioned, showing direction and approximate slope of surface; location of all present or proposed retaining walls; arroyos, canals, irrigation or drainage channels; water supply lines, wells or other water sources; other on-site liquid waste systems; paved areas, roadways and structures; location of the proposed liquid waste system with relation to lot lines and structures; and to all sources of water supply located within 200 feet.

(2) Sufficient details of construction, materials and components necessary to assure compliance with the requirements of 20.7.3 NMAC.

(3) A set of floor plans or verification of the total flow for the structure(s) served by the liquid waste system.

B. The department may also require the following information be included with the application:

(1) A detailed log of soil formations and groundwater level as determined by soil borings or a test hole(s) dug in close proximity to any proposed seepage pit or disposal field.

(2) Any additional information that may be necessary to demonstrate that the permit will not create a hazard to public health or degrade a body of water.

C. Except as otherwise provided in Subsection D of this section, the department shall, within 10 working days after receipt of the completed application, grant the permit, grant the permit subject to conditions or deny the permit and shall notify the applicant of the action taken. Within five working days, the department shall determine if a permit application is administratively complete. The department shall notify the applicant, orally or in writing, if the application is administratively

incomplete. The determination that an application is administratively complete does not mean that the proposed system meets the requirements of 20.7.3 NMAC.

D. If the department's initial review of the application indicates that the imposition of more stringent requirements may be necessary pursuant to Subsection L of 20.7.3.201 NMAC or Subsection L of 20.7.3.401 NMAC, the department may extend the time for the review of the application until 20 working days after receipt of the completed application provided that the department shall notify the applicant of such extension within 10 working days after receipt of the completed application.

E. When the permit is granted subject to conditions, denied or more stringent conditions applied, the reason for the action shall refer to the appropriate regulation(s) and be given in writing.

[20.7.3.402 NMAC - Rp, 20.7.3.402 NMAC, 9/1/13]

**20.7.3.403 PERMITTING ;
ADVANCED TREATMENT OR
ALTERNATIVE DISPOSAL:**

A. An application for a permit proposing advanced treatment (with conventional or alternative disposal) or alternative disposal (with conventional treatment) may be submitted.

B. Applications shall include the information required for a conventional treatment or disposal system, and:

(1) for applications proposing advanced treatment with either conventional or alternative disposal:

(a) the applicant shall demonstrate that the system has been approved by the department and shall include operation and maintenance information, monitoring plans and maintenance agreements;

(b) the applicant must demonstrate the applicability and effectiveness of the technology on the site where it is to be used;

(c) a copy of all signed maintenance and sampling contracts shall be attached to the application; the effective date of the maintenance and sampling contracts shall be the day of final permit approval;

(d) the property owner shall have maintenance and sampling contracts in effect for the duration of the permit; and

(e) the property owner shall provide to the department copies of all maintenance and sampling contracts within 30 days of contract issuance or renewal; and

(2) for applications proposing alternative disposal with conventional treatment, the applicant shall include details of design, sizing, construction and operation; such disposal systems include, but are not limited to, mounds, evapotranspiration systems, pressure dosed systems, alternating

drainfields, non-discharging constructed wetlands, non-gravity systems and approved surface applications.

C. For applications proposing advanced treatment or alternative disposal, within 10 working days, the department shall determine if a permit application for advanced treatment or alternative disposal is administratively incomplete. The department shall notify the applicant, orally or in writing, if the application is administratively incomplete. The determination that an application is administratively complete does not mean that the proposed system meets the requirements of 20.7.3 NMAC. Within 20 working days after receipt of the administratively complete application, the department shall grant the permit, grant the permit subject to conditions or deny the permit and shall notify the applicant of the action taken.

D. When the permit is granted subject to conditions or the application denied, the reason for the action shall refer to the appropriate regulation(s) and be given in writing.

E. For advanced treatment systems, the authorization to operate the system shall be valid until a change of ownership of the system occurs. At the time of transfer of ownership, the new owner shall submit an amendment of permit updating the ownership change and also provide the department a copy of the valid maintenance and sampling contract in the name of the new owner.

[20.7.3.403 NMAC - Rp, 20.7.3.403 NMAC, 9/1/13]

**20.7.3.404 PERMITTING ;
HAVING RECEIVED EXPERIMENTAL
OR CONDITIONAL APPROVAL:**

A. The department may issue a permit, on an individual basis, for the installation of an on-site liquid waste system that has received experimental or conditional approval. The permit applicant must demonstrate that the proposed system, by itself or in combination with other on-site liquid waste systems, will neither cause a hazard to public health nor degrade a body of water and that the proposed system will provide a level of treatment at least as effective as that provided by on-site liquid waste systems, except privies and holding tanks, that meet the requirements of 20.7.3 NMAC.

B. Prior to the approval of a permit for an on-site liquid waste system that has received experimental or conditional approval, the system shall be reviewed by the wastewater technical advisory committee pursuant to 20.7.3.905 NMAC.

C. A field demonstration, which meets the following requirements, shall be required for a system proposed for experimental approval.

(1) Conditions for installation, operation, maintenance and monitoring at the proposed demonstration site shall be reviewed and approved by the department. Systems with experimental approval may only be installed on lots where a conventional system would be allowed.

(2) On-site testing and evaluation, as required by the department and paid for by the permit applicant, shall be performed for a period recommended by the wastewater technical advisory committee and adopted by the department. The results of the evaluation period shall be forwarded to the wastewater technical advisory committee for review and further action.

D. A contingency plan shall be included to provide liquid waste treatment that meets the requirements of 20.7.3 NMAC if the system with experimental or conditional approval fails to meet the requirements of 20.7.3 NMAC.

E. A copy of a signed maintenance contract and sampling contract, if applicable, between the property owners and a certified maintenance service provider shall be attached to the permit application for each system with experimental or conditional approval. The property owner shall have a maintenance contract in effect for the duration of the permit. The property owner shall provide to the department copies of all maintenance contracts required to be in effect within 30 days of contract issuance or renewal.

[20.7.3.404 NMAC - Rp, 20.7.3.404 NMAC, 9/1/13]

**20.7.3.405 PERMITTING ;
VARIANCES:**

A. Any person seeking a variance from the requirements contained in 20.7.3 NMAC shall do so by filing a written petition with the field office of the department having jurisdiction for the area where the system is to be installed.

B. The petition shall be made on a form provided by the department, signed by the petitioner or an authorized representative and accompanied by relevant documents or materials that supports the petitioner's request for a variance. The petitioner shall give notice to all landowners sharing a common boundary and within 100 feet when sharing a common right-of-way. If no property boundary is within 1000 feet of the system, notification is not required, except as otherwise provided in this part. In addition, all parties sharing a private or public water supply source located on the lot where the variance is proposed shall be notified. Said notice shall include the nature of the variance petition, the date of submission of the petition to the department, the address of the department field office to which the petition is being submitted and the time frame for department action

as provided in Subsection D of 20.7.3.405 NMAC below.

C. Upon review of the petition, the department may require the submittal of other relevant information to provide reasonable assurance that the conditions set forth in Paragraphs (1) and (2) of Subsection E of 20.7.3.405 NMAC are met.

D. The department shall, after a minimum of 10 but not more than 20 working days following receipt of the completed petition, grant the variance, grant the variance subject to conditions or deny the variance and shall so notify the applicant and any other person making a written submission concerning the petition. The reason for the department's action shall be provided in writing and the appropriate regulations cited.

E. The department shall deny the variance petition unless the petitioner establishes by clear and convincing evidence that:

(1) the proposed on-site liquid waste system will, by itself or in combination with other on-site liquid waste systems or other discharges subject to 20.6.2.3000 through 20.6.2.3114 NMAC, neither cause a hazard to public health or degrade any body of water; and

(2) granting the variance will result in public health and environmental protection equal to or greater than the minimum protection provided by the varied requirement.

F. The department shall maintain a file of all variances granted and denied. The file shall be open for public inspection.

[20.7.3.405 NMAC - Rp, 20.7.3.405 NMAC, 9/1/13]

20.7.3.406 PERMITTING ; APPEALS:

A. Any affected person who is dissatisfied with action taken by the department on a permit application or variance petition may appeal to the secretary. The request must be made in writing to the secretary within 15 working days after notice of the department's action has been issued. Unless an appeal is received by the secretary within 15 working days after notice to the applicant or petitioner of the department's action, the decision of the department shall be final.

B. If an appeal is received within the 15 working day time limit, the secretary shall hold a hearing within 15 working days after receipt of the request. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail. If the appeal is on a variance petition, the secretary shall also notify all persons involved under Subsection B of 20.7.3.405 NMAC of the

hearing date, time and place of the hearing by certified mail.

C. In the appeal hearing, the burden of proof is on the person who requested the hearing. Where the department requires more stringent requirements pursuant to Subsection L of 20.7.3.201 NMAC, the burden of proof of the necessity for the more stringent requirements shall be upon the department.

D. Appeal hearings shall be held at a place designated by the secretary in the area where the proposed on-site liquid waste system is to be located, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

E. Upon request, the hearing shall be recorded. The person who requests the recording shall pay recording costs.

F. In appeal hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

G. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within 15 working days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by Rule 1-075 NMRA.

[20.7.3.406 NMAC - Rp, 20.7.3.406 NMAC, 9/1/13]

20.7.3.407 through 20.7.3.500 [RESERVED]

20.7.3.501 DESIGN; LIQUID WASTE TREATMENT UNITS; GENERAL:

A. Plans for treatment units that have not been previously approved by the department, including septic tanks, shall be submitted to the department for approval and certification. Such plans shall show

all dimensions, reinforcement, structural calculations and such other pertinent data as may be required by the department. Plans for advanced treatment units shall be submitted to the department for review by the wastewater technical advisory committee pursuant to 20.7.3.905 NMAC. Plans for advanced treatment units that have not been previously approved by the department shall meet the requirements set forth by the wastewater technical advisory committee. All plans shall be stamped by a professional engineer.

(1) Septic tanks shall be recertified on an annual basis. A recertification fee is required pursuant to 20.7.11.9 NMAC. Failure to recertify shall result in the suspension of department approval.

(2) Failure of the manufacturer of an advanced treatment unit to comply with the conditions of approval by the department shall result in non-approval or suspension of department approval for the advanced treatment unit.

B. All treatment units and tanks, regardless of material or method of construction and unless otherwise specified in 20.7.3 NMAC, shall:

(1) be designed and constructed to withstand all reasonable lateral earth pressures under saturated soil conditions with the tank empty;

(2) support a minimum live load at the surface of 300 pounds per square foot with three feet of cover unless heavier loads are expected;

(3) not be subject to excessive corrosion or decay;

(4) have the manufacturer's name, New Mexico registration number, year of construction and tank capacity in gallons permanently displayed on the tank above the outlet pipe;

(5) be watertight;

(6) not be constructed or manufactured on site, in the ground, when saturated soil conditions during construction are closer than three inches to the bottom of the excavation;

(7) be protected against flotation under high ground water conditions and for units installed in floodplains;

(8) be installed so that they are easily locatable and accessible;

(9) be approved by the international association of plumbing and mechanical officials (IAPMO); or meet IAPMO minimum standards as demonstrated to the department by approved laboratory testing; or meet all requirements of 20.7.3.501 and 502 NMAC as certified by a professional engineer; or be recommended by the wastewater technical advisory committee and approved by the department; and

(10) all access risers shall be attached to the treatment unit with a watertight or water resistant seal.

C. Treatment units may be constructed of the following materials:

- (1) precast reinforced concrete;
- (2) poured-in-place concrete;
- (3) fiberglass;
- (4) polyethylene; or
- (5) other materials as approved in writing by the department.

D. Metal, wooden, concrete block and homeowner built tanks are prohibited.

E. A secure lid shall consist of one or more of the following:

- (1) a padlock;
- (2) a twist lock cover requiring special tools for removal;
- (3) covers weighing 58 pounds or more, net weight;
- (4) a hinge and hasp mechanism that uses stainless steel or other corrosion resistant fasteners to fasten the hinge and hasp to the lid and tank for fiberglass, metal or plastic lids; or
- (5) other mechanisms approved by the department.

F. Wherever vehicular traffic is anticipated to cross over the liquid waste treatment unit, pump station or pump chamber, the unit shall be designed by a professional engineer to withstand the anticipated traffic loading.

G. All solid wall pipe connections, fittings and penetrations shall be watertight.

H. Each tank shall be structurally designed to withstand all anticipated earth or other loads. All septic tank covers shall be capable of supporting an earth load of not less than 300 pounds per square foot when the maximum fill coverage does not exceed three feet. All access risers covers shall be capable of supporting a live load of not less than 300 pounds per square foot.

I. Fiberglass or reinforced plastic septic tanks shall be certified to IAPMO standards. Fiberglass or plastic septic tanks shall be installed according to the manufacturer's instructions. A copy of the manufacturer's installation instructions shall be available for inspection by the department at the installation site.

J. Concrete liquid waste treatment units.

- (1) Minimum concrete thickness.
 - (a) walls: two and one-half inches in thickness.
 - (b) floors: three inches in thickness.
 - (c) covers: three inches in thickness.
- (2) Floors shall be an integral part of the tank.
- (3) Where sections are used, tongue and groove joints or keyways shall be used and shall be sealed with an approved sealer and shall be watertight.

(4) Poured-in-place tanks shall be designed and certified by a professional engineer.

(5) All concrete liquid waste treatment units, except those approved for use utilizing concrete meeting type V specifications, shall be protected from corrosion by coating internally with an approved bituminous coating or by other acceptable means. The coating shall cover all exposed concrete and shall extend to at least six inches below the waterline.

(6) Treatment unit construction materials shall meet the following minimum specifications:

- (a) concrete strength - 3500 psi @ 28 days, density 140 PCF;
- (b) cement Portland type II or V per the latest version ASTM specifications;
- (c) admixtures per the latest version of ASTM specifications; and
- (d) reinforcing per the latest version of ASTM specifications for steel bars, grade 40/60 or equivalent.

(7) Be installed level on undisturbed or compacted soil, 1/4 to 3/4 inch pea gravel or sand. [20.7.3.501 NMAC - Rp, 20.7.3.501 NMAC, 9/1/13]

20.7.3.502 DESIGN ; CONVENTIONAL TREATMENT UNITS; CONSTRUCTION STANDARDS:

A. All conventional treatment units, regardless of material or method of construction and unless otherwise specified in this part, shall be designed to produce a clarified effluent and shall provide adequate space for sludge and scum accumulations based on a minimum hydraulic retention time of 24 hours at maximum sludge depth and scum accumulation.

B. Septic tanks shall have a minimum of two compartments. The inlet compartment of a septic tank shall be 2/3 of the total liquid capacity of the tank, but not less than 500 gallons liquid capacity, and shall be at least three feet in width and five feet in length. Liquid depth shall be not less than two feet and six inches nor more than six feet. The second compartment of a septic tank shall have a liquid capacity of 1/3 of the total capacity of such tank. In septic tanks having over 1500 gallons capacity, the second compartment may not be less than three feet in length.

C. Multiple tanks installed in series may be allowed with department approval provided the total tank volume is at least 2.5 times the system design flow. Minimum tank sizes are as follows:

- (1) for flows up to 1000 gpd, the capacity of each tank must be at a minimum 900 gallons; and
- (2) for flows between 1000 and

2000 gpd, the capacity of each tank must be a minimum of 1200 gallons.

D. Access to each septic tank shall be provided by at least two access openings, each of which shall be at least 20 inches in minimum dimension. One access opening shall be placed over the inlet and one access opening shall be placed over the outlet. Whenever a first compartment exceeds 12 feet in length, an additional access opening shall be provided over the baffle wall. Each access opening shall be extended to the surface of the ground with a secure lid. These access risers shall be 24 inches in diameter for depths of zero to three feet and for depths greater than three feet shall be at least 30 inches in diameter. If the access risers are made of concrete, they shall be coated with a coating approved by the department. "Wet-or-dry" coatings and mastics, or other water-based materials are not acceptable. Access risers shall be constructed of precast concrete, premanufactured plastic made for risers, culvert or double wall high density polyethylene or equivalent plastic with proper covers or lids. Rain barrels, trash cans or 55-gallon drums or other inappropriate materials are not acceptable access riser material.

E. The inlet and outlet pipe openings shall be not less in size than the connecting sewer pipe and shall have a watertight seal approved by the department. The vertical leg of round inlet and outlet fittings shall not be less in size than the connecting sewer pipe nor less than four inches. A baffle type fitting shall have the equivalent cross-sectional area of the connecting sewer pipe and not less than a four inch horizontal dimension when measured at the inlet and outlet pipe inverts, unless it is a pumped system.

F. The inlet and outlet pipe or baffle shall extend at least four inches above and at least 12 inches below the water surface. The invert of the inlet pipe shall be at a level not less than two inches above the invert of the outlet pipe. Inlet and outlet pipe or baffles shall be, at a minimum, schedule 40 PVC, ABS or cast-in-place concrete.

G. Inlet and outlet pipe fittings or baffles and compartment partitions shall have a free vent area equal to the required cross-sectional area of the building sewer or private sewer discharging into the septic tank to provide free ventilation above the water surface from the disposal field or seepage pit through the septic tank, building sewer and stack to the outer air.

H. All septic tanks shall include an effluent filter approved by the department, installed on the outlet of the tank before final discharge, with an access riser installed to grade, and with a handle extending to within six inches of the top of the riser.

I. The sidewalls, except on

cylindrical tanks, shall extend at least nine inches above the liquid depth. The cover of the septic tank shall be at least two inches above the back vent openings.

J. Partitions or baffles between compartments shall be of solid, non-corrosive, durable material and shall extend at least four inches above the water level. Metal or wooden baffles are prohibited.

(1) An inverted fitting equivalent in size to the tank inlet, but in no case less than four inches in size, shall be installed in the inlet compartment side of the baffle with the bottom of the fitting placed midway in the depth of the liquid.

(2) If a horizontal slot is used, the slot shall extend the width of the tank, be no more than six inches in height and located midway in the depth of the liquid.

K. Fiberglass or reinforced plastic tanks shall be certified to current IAPMO standards.

(1) Each access and inspection hole cover shall have approved fasteners not subject to deterioration by liquid or gases normally present in septic tank systems to assure that the covers will remain in place. All covers shall overlap the hole by a minimum of two inches in all directions.

(2) Each tank shall be free from visual defects such as foreign inclusions, dry spots, air bubbles, pimples and delamination. The inner and outer surfaces shall have a smooth, continuous finish with no exposed fibers. Both the inner and outer surfaces shall have a continuous resin rich surface and no fibers shall be exposed either directly from cracks, porosity or holes, or indirectly through bubbles that may break and expose fibers.

[20.7.3.502 NMAC - Rp, 20.7.3.502 NMAC, 9/1/13]

20.7.3.503 DESIGN; PUMP STATIONS AND EQUIPMENT:

A. Pump stations or pump chambers shall be watertight and shall be constructed of concrete, plastic, fiberglass or other approved material. Tanks and chambers shall be designed and constructed so as to serve their intended purpose, meet appropriate material and structural requirements equal to those required of septic tanks as described in 20.7.3.501 NMAC, and appropriately coated to resist corrosion with the exception of concrete tanks constructed of type V concrete. Tanks are subject to water tightness testing at the department's discretion.

B. All valves, motors, pumps, aerators and other mechanical or electrical devices shall be located where they will be accessible for inspection and repair at all times without requiring entry into the tank and protected with a locking removable cover on an access port of at least 20 inches in minimum dimension. Concrete tanks

and chambers may have covers of at least 58 pounds in place of a cover and locking mechanism.

C. Pump stations or pump chambers shall be equipped with both audible and visible alarms, or remote and visual alarms, for high water and pump failure. All alarm and control circuits shall be on a separate circuit from pumps and shall be contained in weather-proof control boxes or located inside a building or other weather-proof structure. Alarms shall be placed in a conspicuous location approved by the department.

D. Pumps and equipment shall be designed to pump sewage, septic effluent or treated wastewater as appropriate, to prevent freezing and prevent siphoning of the dispersal area back to the tank and shall be sized to serve their intended purpose.

[20.7.3.503 NMAC - Rp, 20.7.3.812 NMAC, 9/1/13]

20.7.3.504 DESIGN; BUILDING SEWER:

A. The building sewer connects the building drain to the septic tank or liquid waste treatment unit. Horizontal building sewer piping shall be run in practical alignment and a uniform slope of not less than 1/4 of an inch per foot or 2% toward the point of disposal provided that where it is impractical due to the structural features or arrangement of any building or structure to obtain a slope of 1/4 of an inch or 2%, any such pipe or piping four inches in diameter or larger may have a slope of not less than 1/8 of an inch per foot or 1%, when first approved by the department.

B. Each horizontal sewer pipe shall be provided with a cleanout at its upper terminal and each run of pipe that is more than 100 feet in length shall be provided with a cleanout for each 100 feet or fraction thereof. Cleanouts shall be installed pursuant to the New Mexico plumbing code.

C. Sewer piping shall be approved material having a smooth uniform bore. Vitrified clay pipe or fittings shall not be used above ground or where pressurized by a pump or ejector. Vitrified clay pipe or fittings shall be a minimum of 12 inches below ground.

[20.7.3.504 NMAC - Rp, 20.7.3.813 NMAC, 9/1/13]

20.7.3.505 through 20.7.3.600

[RESERVED]

20.7.3.601 DESIGN; ADVANCED TREATMENT SYSTEMS; GENERAL:

A. The level of treatment required and the type of disposal allowed shall be determined by the site evaluation and the character of the waste to be treated and disposed using 20.3.7.605 NMAC. A

liquid waste system with an approved non-discharging disposal design may be installed in lieu of the required advanced treatment system.

B. Prior to installation, all proprietary treatment systems proposed for secondary or tertiary treatment must be capable of meeting the performance standards of 20.7.3.602-604 NMAC, must be recommended for approval by the wastewater technical advisory committee and approved by the secretary of the department. Manufacturers of advanced treatment systems must comply with all conditions set by the department.

C. Any design of a conventional or advanced treatment system with site or other limiting conditions that cannot be addressed by following a standard design from alternative resources recognized by the department shall be designed and sealed by a professional engineer.

D. Ventilation of treatment units providing advanced treatment shall be in accordance with the manufacturer's recommendation.

E. If an adequate sampling port or sampling point is not provided in the design of an advanced treatment system, the installer shall provide an acceptable sampling port in the effluent line for the treatment unit. The installer may propose a sampling port configuration.

(1) An acceptable sampling port for a residential unit may be manufactured from an eight inch diameter pipe. The sample port shall be watertight. The water depth in the pipe shall be at least four inches. The outlet will be one inch lower than the inlet.

(2) If there are significant settled solids in the sampling well, the sampler shall clean out the sampling port. The sample can be collected either from the influent overflow or from the water collected in the sample port after cleaning.

[20.7.3.601 NMAC - Rp, 20.7.3.601 NMAC, 9/1/13]

20.7.3.602 DESIGN; SECONDARY TREATMENT STANDARDS:

A. Secondary treatment systems shall produce an effluent that meets the following requirements:

(1) 5-day biochemical oxygen demand of 30 mg/l; and

(2) total suspended solids of 30 mg/l.

B. Secondary treatment systems may be installed to overcome site conditions set forth in 20.7.3.605 NMAC.

C. The secondary treatment unit shall be operated in accordance with the manufacturer's specification and department approval conditions.

[20.7.3.602 NMAC - Rp, 20.7.3.602 NMAC,

9/1/13]

20.7.3.603 DESIGN; TERTIARY TREATMENT STANDARDS:

A. Tertiary treatment systems shall provide total nitrogen (TN) removal in addition to secondary treatment.

B. For lots that exceed the allowable hydraulic loading pursuant to Subsection C of 20.7.3.301 NMAC, a department approved tertiary treatment unit may be installed. The treatment unit must be capable of removing TN to a concentration equal to or less than the concentration limit calculated pursuant to Subsection C 20.7.3.603 NMAC.

C. Utilizing the standard loading equation, (flow (gpd) X conc. (mg/l) X 8.34 lbs./gal. X 365 days/yr)/ 1,000,000 = lbs./yr/ac., and assuming an average of 60 mg/l of TN in the septic tank effluent and a maximum flow of 500 gpd/ac, the following simplified equation shall be used for determining the required TN concentration allowed for a specific lot size: total nitrogen concentration (in mg/l) = [lot size (in acres) / design flow (in gpd)] x 30,000.

D. The treatment unit shall be operated in accordance with the manufacturer's specification and department approval conditions.

E. Total nitrogen effluent testing, when required pursuant to Subsection C of 20.7.3.901 NMAC, shall meet the concentration limit calculated pursuant to Subsection C of 20.7.3.603 NMAC.

[20.7.3.603 NMAC - Rp. 20.7.3.603 NMAC, 9/1/13]

20.7.3.604 DESIGN ; DISINFECTION TREATMENT STANDARDS:

A. Systems requiring disinfection shall provide treated effluent that shall not exceed 126 colony forming units (CFUs) of E. coli bacteria per 100 ml.

B. Disinfection is required to meet the specific site conditions set forth in 20.7.3.605 NMAC.

C. When disinfection is required, the effluent shall be subject to a minimum of secondary treatment prior to disinfection.

[20.7.3.604 NMAC - Rp, 20.7.3.604 NMAC, 9/1/13]

20.7.3.605 DESIGN; MINIMUM REQUIRED TREATMENT LEVELS FOR SITE CONDITIONS:

A. The required level of treatment shall be based on the most restrictive combination of siting conditions.

B. The following treatment levels are required for the soil types as described in Table 703.1:

(1) type Ia - secondary treatment and disinfection except as noted in

Subsection F of 20.7.3.703 NMAC;

(2) type Ib, II, and III - primary treatment; and

(3) type IV - primary treatment with an appropriate disposal method as approved by the department.

C. The following treatment levels are required for the depth of suitable soil:

(1) greater than or equal to four feet of suitable soil - primary treatment;

(2) one to less than four feet of suitable soil - secondary treatment and disinfection; and

(3) no discharge with less than one foot of suitable soil to groundwater, karst or fractured bedrock.

D. The following treatment levels are required for hydraulic loading rates and lot size:

(1) less than or equal to 500 gallons per day per acre with a minimum lot size of 0.75 acre - primary treatment; and

(2) greater than 500 gallons per day per acre or less than 0.75 acre - tertiary treatment;

(3) for lots less than 0.75 acre overlaying anoxic groundwater, secondary treatment shall be required and tertiary treatment may be required; to be exempt from tertiary treatment requirements, the permit applicant shall show by clear and convincing evidence that the discharge of liquid waste shall not degrade a body of water.

E. The following are requirements for a reduction in the disposal field setback distance, as set forth in Table 302.1:

(1) Tertiary treatment and disinfection are required for any reduction in setback distance between 50 feet and less than 100 feet from a private drinking water well located on the subject property.

(2) A variance is required and tertiary treatment and disinfection are required for any reduction in setback distance to:

(a) any private drinking water well located on the subject property less than 50 feet from the disposal system;

(b) any private drinking water well no located on the subject property; or

(c) any public drinking water well.

F. A non-discharging system may be used in lieu of advanced treatment.

G. A mound system or elevated system in accordance with 20.7.3.806 NMAC may be used to meet clearance requirements or to overcome soil type limitations in lieu of advanced treatment. A sand-lined trench or bottomless sand filter in accordance with 20.7.3.812 NMAC may be used to meet clearance requirements in lieu of advanced treatment.

H. If the existing level of

nitrate-N in the groundwater exceeds 5 mg/l, more stringent requirements pursuant to Subsection L of 20.7.3.201 NMAC may be required.

[20.7.3.605 NMAC - Rp, 20.7.3.605 NMAC, 9/1/13]

20.7.3.606 through 20.7.3.700

[RESERVED]

20.7.3.701 DESIGN ; CONVENTIONAL DISPOSAL FIELD; DESIGN AND CONSTRUCTION:

A. Disposal trenches shall conform to the following:

(1) the trench width shall be no less than one foot or no more than three feet;

(2) a minimum of six inches of aggregate shall be placed below the invert of the distribution pipe; and

(3) up to a maximum of three feet of aggregate may be placed below the distribution pipe.

B. Absorption beds shall conform to the following:

(1) a minimum of six inches of aggregate shall be placed below the invert of the distribution pipes; and

(2) up to an additional one foot of aggregate may be placed below the distribution pipes.

C. For conventional disposal trenches and absorption beds, the distribution lines shall have an inside diameter of no less than four inches. Perforated pipe shall have two rows of holes and a minimum perforated area of one and one-half square inches per linear foot. Perforations shall be located not less than 30 degrees or more than 60 degrees from the vertical on either side of the center line of the bottom of the pipe. All plastic pipe and fittings shall conform to the current and appropriate ASTM standards. End caps shall be installed on all distribution lines.

D. Before placing aggregate or drain lines in a prepared excavation, all smeared or compacted surfaces shall be removed from trenches by raking to a depth of one inch and the loose material removed. Aggregate shall be placed in the trench to the depth and grade required. Drain lines shall be placed on the aggregate. The drain lines shall then be covered with aggregate to a minimum depth of two inches and then covered with untreated building paper, straw or similar porous material to prevent closure of voids with earth backfill. When geotextile fabric is utilized, no aggregate cover of the drainlines is required. No earth backfill shall be placed over the aggregate cover until authorized by the department.

E. The department shall allow drainfields for proprietary systems to be sized in accordance with recommendations by the wastewater technical advisory committee that have been

approved by the secretary. The wastewater technical advisory committee shall make its recommendations upon standardized, objective evaluations in accordance with Section 9-7A-15 NMSA 1978. Drainfields for proprietary systems shall not be reduced in size by more than 30% in comparison to a conventional system.

F. Capped inspection ports shall be constructed, at a minimum, of four inch diameter, SDR 35 or better pipe installed at the end of each trench, provide inspection access to the bottom of the trench and terminate at finished ground level. Inspection ports may be installed below grade if located in a protective enclosure and locatable with GPS coordinates or a metal detector.

G. If seepage pits are used in combination with disposal fields, the aggregate in the trenches shall terminate at least 10 feet from the pit excavation and the line extending from such points to the seepage pit shall be constructed of approved pipe with watertight joints.

H. Where two or more drain lines are installed, an approved distribution box of sufficient size to receive lateral lines shall be installed at the head of each disposal field. The inverts of all outlets shall be level and the invert of the inlet shall be at least one inch above the outlets. Distribution boxes shall be designed to ensure equal flow and shall be installed on a level base in natural undisturbed or compacted soil or on a concrete footing. Access to the distribution box shall be provided at the ground surface. However, the installer, after approval by the department, may install in lieu of a distribution box a tee fitting and a distribution header to multiple trenches provided that the tee and header pipe are level.

(1) Concrete distribution boxes shall be coated on the inside with bituminous coating or other approved method acceptable to the department.

(2) All laterals from a distribution box to the disposal field shall be approved pipe with watertight joints. Multiple disposal field laterals, wherever practicable, shall be of uniform length.

(3) Connections between a septic tank and distribution box or drainfield shall be laid with approved pipe with watertight joints on natural ground or compacted fill or appropriate bedding material. Such approved pipe shall be SDR 35 or better.

I. When more than 500 lineal feet of distribution line is required, a low-pressure dosed system shall be used.

J. Disposal fields shall be constructed as follows:

	MINIMUM	MAXIMUM
Number of drain lines	1 per field	
Length of each line	--	160 ft.
Bottom width of trench	12 in.	36 in.
Depth of earth cover of lines	9 in.	--
Grade of lines	level	3 inch/100 ft.
Aggregate under drain lines	6 in.	3 ft.
Aggregate over drain lines with:		
geotextile fabric	0 in.	--
other material	2 in.	--

K. Minimum spacing between trenches or absorption beds shall be four feet plus two feet for each additional foot of depth below the invert of the distribution line. Distribution drain lines in absorption beds shall not be more than six feet apart on centers and no part of the perimeter of the bed shall be more than three feet from a distribution drain line.

L. When necessary to prevent line slope in excess of three inches per 100 feet, absorption trenches or beds shall be stepped. The lines between each horizontal section shall be made with watertight joints and shall be designed so each horizontal trench or bed shall be utilized to the maximum capacity before the effluent shall pass to the next lower trench or bed. The lines between each horizontal absorption section shall be made with approved watertight joints and installed on natural or unfilled ground.

M. Sites with type Ia or type IV soils may use soil replacement. Sites with failed disposal systems may also use soil replacement. In addition to other design, setback and clearance requirements of 20.7.3 NMAC, the following conditions are required:

- (1) The replacement soil shall be type Ib, or a higher level, as described in Table 703.1.
- (2) Replacement soil shall be placed to a depth of at least 48 inches below the bottom of each trench.
- (3) Replacement soil is placed to a width of at least 24 inches on both sides and ends of each trench.
- (4) The application rate used for design of the trench shall be 2.00 square feet per gallon per day.

N. Disposal systems, including both conventional and alternative disposal, shall not be paved over or covered by concrete or any material that can reduce or inhibit any possible evaporation of effluent. Disposal systems shall not be subjected to vehicular traffic of any kind.

[20.7.3.701 NMAC - Rp, 20.7.3.701 NMAC, 9/1/13]

[For specifications for drainfield pipe, see the most recent versions of the ASTM standards: For Type PSM Poly (Vinyl Chloride)(PVC) Sewer Pipe and Fittings, for Poly (Vinyl Chloride)(PVC) Pipe and Fittings, for Corrugated Polyethylene (PE) Tubing and Fittings, and for Smoothwall Polyethylene (PE) Pipe for Use in Drainage and Waste Disposal Absorption Fields]

20.7.3.702 DESIGN; SEEPAGE PIT; DESIGN AND CONSTRUCTION: Seepage pits should only be installed on sites where conventional disposal systems cannot be installed due to site restrictions.

A. The minimum capacity of seepage pits shall conform to the requirements of 20.7.3.703 NMAC.

B. Multiple seepage pit installations shall be served through an approved distribution box or be connected in series by means of a watertight connection laid on undisturbed or compacted soil. The outlet from each seepage pit shall have an approved vented leg fitting extending at least 12 inches below the inlet fitting.

C. Each seepage pit shall have an excavated horizontal dimension of not less than four feet and the maximum horizontal dimension shall not exceed the vertical dimension. Each such pit shall be lined with approved type whole, new, hard-burned clay brick, concrete brick, concrete circular type cesspool blocks or other approved materials.

D. The lining in each seepage pit shall be circular and laid on a firm foundation. Lining materials shall be placed tight together and laid with joints staggered. Except in the case of approved type pre-cast concrete circular sections, no brick or block shall be greater in height than its width and shall be laid flat to form at least a four inch wall. Brick or block greater than 12 inches in length shall have chamfered matching ends and be scored to provide for seepage. Excavation voids behind the brick, block or concrete liner shall have a minimum of six inches of clean 3/4 inch gravel or rock.

- E. All brick or block used in seepage pit construction shall have a minimum compressive strength of 2500 pounds per square inch.
- F. Each seepage pit shall have a minimum sidewall (not including the arch) of 10 feet below the inlet pipe.
- G. The arch, cover or dome of any seepage pit shall be constructed in one of the following three ways.
 - (1) Approved type hard-burned clay brick, solid concrete brick or block laid in cement mortar.
 - (2) Approved brick or block laid dry. In both of the above methods, an approved cement mortar covering of at least two inches in thickness shall be applied, said covering to extend at least six inches beyond the sidewalls of the pit.
 - (3) Approved type one or two piece reinforced concrete slab of 3000 pounds per square inch minimum compressive strength, not less than five inches thick and designed to support an earth load of not less than 400 pounds per square foot.
- H. Each such arch, dome or cover shall be provided with a nine inch minimum inspection hole with plug or cover and shall be coated on the underside with an approved bituminous or other nonpermeable protective compound.
- I. The top of the arch, dome or cover must be a minimum of 12 inches but not more than four feet below the surface of the ground. Risers must be provided to extend the arch, dome or cover to within 12 inches of the surface.
- J. An approved vented inlet fitting shall be provided in every seepage pit so arranged as to prevent the inflow from damaging the sidewall. When using a one or two piece concrete slab cover, the inlet fitting must be an approved 1/4 bend fitting discharging through an opening in the top of the slab cover. On multiple seepage pit installations, the outlet fittings shall meet the requirements of Subsection B of 20.7.3.702 NMAC.
- K. A six inch layer of bentonite clay shall be installed at the bottom of the seepage pit to restrict effluent flow through the bottom area. Alternative material to the bentonite clay may be approved by the department after review. [20.7.3.702 NMAC - Rp, 20.7.3.702 NMAC, 9/1/13]

20.7.3.703 DESIGN; AREA OF DISPOSAL FIELD AND SEEPAGE PITS:

- A. The minimum required absorption area in a disposal field in square feet, and in seepage pits in square feet of side wall, shall be predicated on the liquid waste design flow rate and shall be determined by utilizing the following Table 703.1 based on the soil classification found in the proposed location of the disposal field.
- B. Two test holes, located at opposite ends of the proposed disposal area, may be required for obtaining the soil profile and as provided in Subsection A of 20.7.3.203 NMAC.
- C. A detailed soil profile, in accordance with USDA soil classification methodology, shall be submitted with the liquid waste application for each hole, indicating soil horizons, horizon thickness as a function of depth, and soil texture.
- D. USDA soil surveys may be used where available to help assess typical soils in the area of the proposed installation.
- E. The required absorption area shall be sized on the most restrictive soil horizon located below and within four feet of the bottom of the absorption area.
- F. Conventional treatment systems shall not be constructed in type Ia soils where the depth to groundwater is less than 30 feet. For these soils, refer to 20.7.3.605 NMAC.
- G. Effluent distribution to type IV soils shall be accomplished with an appropriate disposal method as approved by the department such as timed low pressure dosed distribution or alternating drainfields.
- H. The required absorption area shall be calculated by the following formula: **ABSORPTION AREA = Q X AR**, where: Q = the design flow rate in gallons per day; AR = application rate (from Table 703.1)

Table 703.1: Application Rates by Soil Types for Conventional Treatment Systems

Soil Type	Soil Texture	Application Rate (AR) (sq. ft./gal/day)
Ia	Coarse Sand	1.25 (See Subsection F of 20.7.3.703 NMAC)
Ib	Medium Sand, Loamy Sand	2.00
II	Sandy Loam, Fine Sand , Loam	2.00
III	Silt, Silt Loam, Clay Loam, Silty Clay Loam, Sandy Clay Loam	2.00
IV	Sandy Clay, Silty Clay, Clay	5.00 (See Subsection G of 20.7.3.703 NMAC)

- I. The gravel content of in-place natural soil shall not exceed 30%. The department may identify and map areas of the state where groundwater is not at risk form microbial contamination from on-site liquid waste disposal systems that discharge into gravel, and where gravel contents greater than 30% may be allowed. The following hydrogeologic conditions may be considered when determining if

groundwater is not at risk:

- (1) groundwater does not exist;
- (2) uppermost groundwater contains a total dissolved solids concentration greater than 10,000 milligrams per liter;
- (3) uppermost groundwater occurs under confined conditions; and
- (4) uppermost groundwater occurs at a depth of 30 feet or greater with at least four feet of suitable soil in the vadose zone.

J. Disposal trenches:

- (1) The total absorption area shall be calculated utilizing the total trench bottom and sidewall area.
- (2) The total absorption area shall not exceed seven square feet per linear foot of trench.

(3) A minimum of 300 square feet of absorption area shall be provided for each system exclusive of any hard pan, caliche, rock, clay or other impervious formations.

K. Absorption beds may be used in lieu of trenches. The absorption area of the bed shall be at least 50% greater than the minimum required absorption area for trenches with a minimum of 450 square feet of absorption area. The total absorption area shall be calculated utilizing the total bed bottom and sidewall area.

L. The minimum effective absorption area in any seepage pit shall be calculated as the excavated side wall area below the inlet pipe exclusive of any hardpan, caliche, rock, clay or other impervious formations and may be provided in one or more seepage pits.

M. For secondary and tertiary treated effluent, the minimum calculated absorption area required for conventional treatment may be reduced 30%. In no case shall the maximum reduction for the drainfield absorption area exceed 30%. [20.7.3.703 NMAC - Rp, 20.7.3.703 NMAC, 9/1/13]

20.7.3.704 through 20.7.3.800
[RESERVED]

20.7.3.801 PRIVIES AND VAULTS:

A. A privy may be used to dispose of non-liquid-carried human excreta directly to the soil. A vault may be used to dispose of non-liquid-carried human excreta for subsequent pumping and disposal in accordance with 20.7.3.306 NMAC. In addition to all setback and clearance requirements in 20.7.3 NMAC, the following conditions are required.

- (1) The privy is constructed to prevent access by flies or vermin.
- (2) The privy is located to prevent flooding.
- (3) There are sufficient replacement locations for two additional privy pits. Vaults do not require replacement locations.

(4) Privy pits shall be filled with clean earth when excreta accumulate to within one foot of the ground surface.

B. No person shall install or have installed a privy or vault unless that person obtains a permit issued by the department prior to construction of such installation. At the time of application, the total number of privies or vaults and their replacement locations, if required, shall be indicated. When a privy pit is filled, the privy may be moved to a previously identified replacement location on the same lot without modifying or amending the permit.

[20.7.3.801 NMAC - Rp, 20.7.3.802 NMAC, 9/1/13]

20.7.3.802 C L U S T E R SYSTEMS:

A. Use of a cluster system may be considered when lot sizes, location or site conditions make conventional disposal unacceptable.

B. Cluster systems shall be designed and constructed in accordance with the requirements of this regulation. In addition, cluster systems shall be maintained in accordance with 20.7.3.902 NMAC.

C. Each user and successors and assignees in interest connected to the system shall be a permittee and shall be indicated on the permit.

D. After the effective date of the regulation, each permittee and successors and assignees in interest on a cluster system shall be a party to a legally binding, written agreement that provides for the service and maintenance for the life of the system. The agreement shall be recorded in the county in which the property is located. A copy of the agreement shall be provided to the department.

E. The parties to the written agreement shall obtain all necessary rights-of-way, easements or ownership of properties necessary for the operation of the system. All parties that use the cluster system shall be a party to the agreement.

F. The combined area of the lots served by the cluster system plus the area of the parcel where the system is located, if separated from the lots served, shall be used to determine the allowable lot size.

[20.7.3.802 NMAC - Rp, 20.7.3.803 NMAC, 9/1/13]

20.7.3.803 COMPOSTING AND INCINERATING TOILETS:

A. The installation of composting and incinerating toilets shall be in accordance with the New Mexico plumbing code and the local plumbing authority.

B. The installation of a composting/incinerating toilet shall not reduce the design flow for the property.

[20.7.3.803 NMAC - Rp, 20.7.3.804 NMAC, 9/1/13]

20.7.3.804 E F F L U E N T IRRIGATION/REUSE SYSTEMS:

A. Effluent used for irrigation shall meet secondary treatment standards.

B. The effluent may only be utilized subsurface.

C. Application of the effluent resulting in standing or ponding of the effluent, whether liquid or frozen, shall be prohibited. The application of effluent shall not result in the effluent leaving the application area.

D. Effluent irrigation systems shall have no cross connections, direct or indirect, with potable water systems.

E. All effluent irrigation systems shall be pressure dosed to assure an even distribution and loading of effluent throughout the application area.

F. All parts of the reuse system shall be protected from freezing.

G. Effluent shall be contained on the permitted property.

H. The effluent shall only be applied to a suitable landscaped area or to fruit trees or nut trees.

I. Secondary treated and disinfected effluent may be used for toilet flushing or fire suppression with department approval.

J. Setback requirements for effluent irrigation systems shall meet the requirements of 20.7.3.302 NMAC except for the following:

- (1) property lines, two feet for disposal area; and
- (2) building or structure, two feet for disposal area.

K. Approved proprietary effluent drip irrigation systems shall be designed and installed according to manufacturers' specification.

L. A permitted and approved disposal system shall be provided for times when effluent irrigation is not utilized.

[20.7.3.804 NMAC - Rp, 20.7.3.805 NMAC, 9/1/13]

20.7.3.805 EVAPOTRANSPIRATION SYSTEMS:

A. Evapotranspiration systems shall consist of a treatment unit and an evapotranspiration bed (ET bed) for disposal. Evapotranspiration systems shall meet the requirements of 20.7.3.302 NMAC. Unlined ET beds are a discharging system and shall meet the clearance, set back and lot size requirements for conventional absorption systems. Lined ET beds are non-discharging systems and shall be underlain by a liner as specified in Paragraph (3) of

Subsection L of 20.7.3.7 NMAC.

B. The minimum bottom area of ET beds shall be determined from the following formula:

$A = 391 \times Q \div E_L$, where: A = the bottom area of the bed in square feet; Q = the design flow in gallons per day; and E_L = the average annual lake evaporation for the site in inches per year.

C. The average annual lake evaporation shall be determined from the map "Gross Annual Lake Evaporation, New Mexico", USDA, April 1972, or successor version or a mutually acceptable evaporation rate.

D. The minimum bed depth shall be 24 inches as measured from the bottom of the ET bed to the overflow level. The surface crowning, which increases runoff from the ET bed, is above the overflow level of the ET bed. Maximum ET bed depth shall be 30 inches. The bottom of the ET bed shall be level.

E. The ET bed location shall be in an area where exposure to the sun and wind will be maximized.

F. The distribution piping within the ET bed shall be embedded in gravel and covered meeting the specifications in 20.7.3.701 NMAC. Use of approved proprietary drainfield products may be used in lieu of pipe and gravel.

G. The capillary sand fill shall contain 85% or more sand; the percentage of silt plus one and one-half times the percentage of clay shall not exceed 15%. Fine to medium sand is preferred.

H. Loamy sand shall be used for the surface crown. Where loamy sand is not available, capillary sand may be used.

I. The crown surface shall be planted with vegetation suited to the climate and soil of the site and to the wastewater quality and quantity.

J. For a gravity feed system, the overflow height of the ET bed shall be lower than the invert of the septic tank outlet.

K. All ET beds shall be equipped with an inspection port that is suitable to use to pump the system, if needed. [20.7.3.805 NMAC - Rp, 20.7.3.806 NMAC, 9/1/13]

20.7.3.806 MOUND AND ELEVATED SYSTEMS:

A. Mound systems shall meet the requirements of 20.7.3.302 NMAC.

B. Mounds are generally constructed entirely above the surrounding ground surface, however, the mound may be partially buried.

C. The design of the mound system shall be in accordance with the most current design standards of the Wisconsin mound system as specified in the reference

materials in Paragraph (8) of Subsection B of 20.7.3.8 NMAC, or other system designs as approved by the department.

D. Pressure distribution to the mound shall be required.

E. An elevated system shall meet the requirements of 20.7.3.302 NMAC.

F. Elevated systems may be constructed entirely above the surrounding grade or partially buried, as site conditions require.

G. An elevated system must be installed in accordance with proven design criteria and approved by the department. [20.7.3.806 NMAC - Rp, 20.7.3.807 NMAC, 9/1/13]

20.7.3.807 LOW PRESSURE DISPOSAL SYSTEMS:

A. Low pressure dosed (LPD) disposal systems are used to achieve uniform distribution of wastewater throughout the entire disposal system. Effluent is pumped under low pressure through solid pipe into perforated lateral lines installed within a disposal system.

(1) Low pressure dosed disposal systems may be used with any on-site liquid waste system including conventional treatment systems, gray water systems and advanced treatment systems.

(2) Low pressure dosed disposal systems may be used with any disposal system including trenches, beds, mounds, gravelless systems and evapotranspiration systems.

(3) Lift stations are not classified as low pressure dosed disposal systems.

(4) Low pressure dosed disposal systems may use a timer to equalize the flow over a 24-hour period. LPD disposal systems may also be designed to rotate between separate disposal areas by using rotator valves.

(5) All pumps shall be rated by the manufacturer for pumping sewage or effluent.

(6) A single pump may be used for design flows equal to or less than 1,000 gpd. Dual alternating pumps are required for design flows over 1,000 gpd.

(7) Design of the system shall include:

- (a) design flow;
- (b) except for mound systems, soil absorption area sized according to the effluent loading rates found in 20.7.3.703 NMAC;
- (c) total length of header and lateral pipes;
- (d) diameter of perforated lateral lines used;
- (e) size and spacing of holes or emitters; and
- (f) pump performance sizing with

allowances for head and friction losses at rated flows in gallons per minute.

(8) A ball valve shall be located vertically at the end of each lateral line for inspection and flushing except for proprietary drip irrigation systems.

B. A low pressure pipe (LPP) disposal system is a pressurized distribution system placed in shallow, narrow trenches. The effluent discharged to a LPP system must meet, at a minimum, primary treatment standards.

(1) The low pressure pipe system shall be sized as follows.

(a) The required absorption area shall be sized in accordance with Subsection H of 20.7.3.703 NMAC.

(b) A sizing credit of five square feet per linear foot of lateral pipe shall be applied to the total required absorption area.

(c) Each individual lateral shall not exceed 75 feet in length from the feed point unless the design is such that the discharge rate between any two points in the system does not exceed 10%.

(2) Design for LPP systems shall conform to the following.

(a) Trenches shall be 12 inches to 18 inches wide and 12 inches deep.

(b) When aggregate is used, the lateral pipe shall be embedded at or above the center column of aggregate.

(c) The aggregate shall be covered with geotextile material to prevent soil intrusion.

(d) If a proprietary drainfield product other than aggregate is used, the distribution pipe shall be placed so as to prevent soil intrusion into the pipe.

(e) A minimum of four inches and a maximum of 18 inches of soil cover over the trench is required.

(f) Lateral lines shall be placed parallel to the natural contours of the site.

(g) Provisions shall be made for the prevention of siphoning back to the pump tank on upgrade systems and the prevention of draining of the tank on downgrade or flat systems.

(h) All requirements for conventional disposal systems shall be met, including but not limited to, setback and clearance requirements, lot size, design flow calculations, septic tank sizing, prohibitions, wastewater characteristics and advanced treatment requirements.

(i) Runoff shall be diverted away from the system to avoid oversaturation, where possible.

(j) A vegetative cover shall be maintained over the disposal area.

(3) Materials and equipment for LPP systems shall conform to the following.

(a) All treatment units and pump tanks shall meet the structural requirements of 20.7.3.501 NMAC.

(b) The pump tank shall be a single

compartment with a 500 gallon minimum useful volume and allowance to be made for tank volume between the pump intake and tank floor. For septic tank effluent, a separate pump tank, in addition to the septic tank, is required.

(c) Effluent type pumps are required on all systems.

(d) A system design shall demonstrate that the system comes to the design pressure during every pumping cycle.

(e) An alternating valve or solenoid valve system is required to feed separate laterals with elevation differences resulting in 23 feet (10 psi) or greater head differentials. Manual or automatic flushing valves with turn-ups are required on distal ends of all laterals.

(f) In areas of freezing conditions, provisions for the draining of the headers must be made, such as vacuum breakers or vent holes at the system high points.

(g) Pipe shall be rated at 160 psi minimum, ASTM compression drainpipe, schedule 40 or better.

(h) The manifold pipe shall be sized appropriately for system size and configuration. The lateral pipe shall be one inch to two inches in diameter.

(i) The orifice size shall be 5/32 inch to 1/4 inch for septic effluent and 1/8 inch to 1/4 inch for secondary and tertiary treated effluent.

(j) The lateral pipe shall be installed with orifices facing upward.

(4) A maintenance contract shall be required on all LPP systems. Maintenance is to include pump inspection and cleaning, float operation (if applicable), lateral flushing annually at a minimum and septic tank and pump tank pumping as needed.

C. Designs that do not conform to the design parameters specified in Subsections A and B above must be accompanied by documentation justifying the design submitted, including proprietary software input and output reports, and will be considered on a case-by-case basis. [20.7.3.807 NMAC - Rp, 20.7.3.808 NMAC, 9/1/13]

20.7.3.808 HOLDING TANK REQUIREMENTS:

A. The installation of holding tanks for the disposal of liquid wastes shall be authorized on a temporary basis only and only for residential units where conventional or alternative liquid waste treatment systems cannot be installed, except where noted in Subsection E below.

B. The installation of holding tanks shall not be authorized for commercial units except where noted in Subsection E below.

C. Holding tanks shall not be installed to serve any design flow greater than 375 gallons per day, except for the

direct collection of RV waste or to replace an existing holding tank. Total design flow on any property served by a holding tank shall not exceed 375 gallons per day except for the direct collection of RV waste.

D. The installation of holding tanks shall be authorized for no more than one year from the date of installation for units occupied more than 120 days per calendar year.

E. The installation of holding tanks shall be authorized for permanent use only for the following:

(1) residential units, with a design flow rate of 375 gpd or less, occupied 120 days or less per calendar year;

(2) residential units utilizing the holding tank only for the discharge of toilet waste in conjunction with a conventional treatment system for the remainder of the wastewater;

(3) non-residential, non-commercial units, such as guard shacks, toll booths, etc., with a design flow rate of 100 gpd or less; and

(4) the direct collection of RV waste and portable toilet waste for disposal in accordance with 20.7.3.306 NMAC.

F. Holding tanks shall be constructed of the same materials, by the same procedures and to the same standards as described in 20.7.3.501-502 NMAC except that they shall have no discharge outlet.

G. All holding tank installations shall be tested on-site for water tightness.

H. The minimum size of a holding tank shall be 1000 gallons or four times the design flow, whichever is greater.

I. Holding tanks shall be located in an area readily accessible to a pump vehicle under all weather conditions and where accidental spillage during pumping will not create a nuisance or a hazard to public health.

J. Holding tanks shall be protected against flotation under high ground water conditions by weight of tank (ballasting), earth anchors or by surface or shallow installation. Holding tanks shall be protected from freezing.

K. Holding tanks shall be equipped with a visible and audible high water alarm system placed in a conspicuous location approved by the department. The alarm shall be set to activate at 80% of the tank capacity. It shall be a violation of these regulations to tamper with or disconnect the alarm system.

L. The owner of a holding tank shall have the tank pumped to prevent discharge from the tank and the liquid waste (septage) properly disposed of in compliance with all applicable laws and regulations. Owners of holding tanks shall maintain records demonstrating pumping and proper

disposal of septage from the units to prevent discharge. Copies of pumping and disposal manifests shall be retained by the owner for at least seven years and shall be made available to the department for inspection on request. The records shall be:

(1) kept on a form provided by the department if requested;

(2) accompanied by such other documentation as the department may reasonably require;

(3) signed by the lot owner or an authorized representative;

(4) submitted on a semi-annual basis, or a schedule otherwise determined by the department, to the department field office having jurisdiction, and

(5) included in any transfer inspection report or unpermitted system inspection report.

M. No person shall install, operate, modify or maintain a holding tank that allows discharge to the soil or to waters of the state.

N. The department may perform site inspections periodically to ensure that a holding tank does not discharge.

O. All units utilizing a holding tank shall connect to a public sewer upon availability and in accordance with the local authority that has jurisdiction. A public sewer shall be deemed available when the public sewer is located in any thoroughfare, right-of-way or easement abutting the lot on which the unit is located. The holding tank shall be properly abandoned in accordance with 20.7.3.307 NMAC within 30 days of connection to the public sewer.

[20.7.3.808 NMAC - Rp, 20.7.3.809 NMAC, 9/1/13]

20.7.3.809 GRAY WATER SYSTEMS: Graywater systems not meeting the requirements of 20.7.3.810 NMAC shall meet the following requirements.

A. The installation of separate graywater systems shall be authorized for residential units and shall be located on the lot served. The capacity of the on-site liquid waste system shall not be decreased or otherwise affected by the existence or proposed installation of a graywater system servicing the lot.

B. All information required in 20.7.3.402 NMAC for the issuance of a permit shall be required.

C. Design flows for graywater systems shall be calculated by the following:

(1) 20% of the liquid waste design flow for the segregation of laundry waste; and

(2) 33% of the liquid waste design flow for the segregation of the bathroom (showers, tubs and wash basin) waste.

D. For graywater systems on lots where the residential unit is served

by a sewerage system, the minimum lot size set forth in 20.7.3.301 NMAC shall not be required.

E. Clearance requirements for graywater systems shall meet the requirements of 20.7.3.303 NMAC.

F. Setback requirements for graywater systems shall meet the requirements of 20.7.3.302 NMAC except for the following:

(1) property lines, two feet for disposal area;

(2) building or structure, two feet for disposal area; and

(3) building or structure, zero feet for above ground tanks.

G. A treatment unit shall be required for all graywater systems. If a tank is utilized as the treatment unit:

(1) the tank may be a single compartment;

(2) the tank shall be sized to accommodate one day design flow; and

(3) access to the tank shall be provided by a tamper resistant lid installed to grade.

H. Graywater should be utilized within 24 hours of collection unless additional treatment is provided.

I. Tanks installed below ground shall meet the requirements of 20.7.3.501-502 NMAC except for the requirements in Subsection G of this section. Tanks shall be protected against possible floatation.

J. Above ground tanks shall be constructed of solid, durable materials, not subject to corrosion or decay and shall be approved by the department. Above ground tanks shall be set on a three inch minimum concrete pad. Metal tanks shall not be authorized.

K. All tanks shall have an overflow drain with a permanent connection to the building drain or building sewer. The tank shall be protected against sewer line backflow by a backwater valve.

L. Each tank shall vented as required by the New Mexico plumbing code.

M. Each tank shall have its rated liquid capacity permanently marked on the unit. In addition, a sign "GRAYWATER SYSTEM, DANGER – UNSAFE WATER" shall be permanently marked on the tank.

N. The disposal system shall be constructed in accordance with 20.7.3.804 NMAC.

O. The graywater system shall have no direct or indirect cross connection with potable water systems.

P. Graywater use for purposes other than irrigation or toilet flushing is prohibited. Irrigation of edible food crops except for fruit trees or nut trees is prohibited.

[20.7.3.809 NMAC - Rp, 20.7.3.811 NMAC,

9/1/13]

20.7.3.810 GRAYWATER DISCHARGES: Graywater discharge of less than 250 gallons per day of private residential graywater originating from a residence for the resident's household flower gardening, composting or landscaping irrigation shall be allowed if:

A. a constructed graywater distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

B. a graywater storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

C. a graywater system is sited outside of a floodway;

D. graywater is vertically separated at least five feet above the ground water table;

E. graywater pressure piping is clearly identified as a nonpotable water conduit;

F. graywater is used on the site where it is generated and does not run off the property lines;

G. graywater is discharged in a manner that minimizes the potential for contact with people or domestic pets;

H. ponding is prohibited, discharge of graywater is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

I. graywater is not sprayed;

J. graywater is not discharged to a watercourse;

K. graywater use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

L. graywater is not stored longer than 24 hours before being discharged;

M. graywater use for purposes other than irrigation or composting is prohibited, unless a permit for such use is issued by the department;

N. graywater is not used to irrigate food plants except for fruit and nut trees;

O. graywater is discharged to a mulched surface area or to an underground irrigation system;

P. graywater is not discharged closer than 100 feet to a watercourse or private domestic well, or closer than 200 feet to a public water supply well;

Q. graywater does not create a public nuisance;

R. for residential units using an on-site liquid waste system for blackwater treatment and disposal, the use

of a graywater system does not change the design, capacity or absorption area requirements for the on-site liquid waste system at the residential unit, and the on-site liquid waste system is designed and sized to handle the combined blackwater and graywater flow if the graywater system fails or is not fully used; and

S. graywater does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities.

[20.7.3.810 NMAC - Rp, 20.7.3.810 NMAC, 9/1/13]

20.7.3.811 SPLIT FLOW SYSTEMS: Split flow systems may be installed for the purpose of reduction of total nitrogen discharges in lieu of installation of non-discharging or tertiary treatment systems.

A. Based on the assumption that toilet waste contains 80% of the total nitrogen in domestic liquid waste and that the quantity of liquid waste from toilets is 25% of the total domestic waste stream, the following formula shall be used to calculate the minimum lot size allowed for permitting of a split flow system: minimum lot size (in acres) = 0.0003 x design flow.

B. The disposal system for non-toilet waste shall be based on the assumption that non-toilet waste comprises 75% of the design flow and therefore may be reduced to 75% of the minimum required absorption area in 20.7.3.703 NMAC.

C. The toilet waste holding tank shall have a minimum capacity of 1000 gallons and shall meet all requirements of holding tanks described in 20.7.3.808 NMAC, except for Subsections A, B, C, D, E and H.

D. Effluent from the waste holding tank may be discharged to an ET bed constructed in accordance with 20.7.3.805 NMAC and sized at 25% of design flow. An effluent filter is required on the waste holding tank.

[20.7.3.811 NMAC - N, 9/1/13]

20.7.3.812 SAND - LINED TRENCHES AND BOTTOMLESS SAND FILTERS:

A. Effluent applied to a sand-lined trench shall not exceed primary treatment standards.

B. The required absorption area shall be calculated based on a maximum loading rate of 1.00 gallon per day per square foot of sand surface. No sidewall credit is allowed.

C. The distribution system shall conform to the requirements of 20.7.3.807 NMAC, Low Pressure Disposal Systems.

D. A minimum of 24 inches of sand, meeting the latest version of ASTM specifications, shall be installed beneath the distribution system.

E. Trench width shall be a minimum of 12 inches and a maximum of 36 inches.

F. The effluent dosing rate shall be at least four doses per day and not more than 24 doses per day.

G. A sand-lined trench may be used to reduce setbacks and clearances as follows:

- (1) one foot to a limiting layer;
- (2) 50 feet to waters of the state; or
- (3) 50 feet to an irrigation well

located on the subject property.
H. A bottomless sand filter is a special case sand-lined trench consisting of a bottomless containment structure located partially above or at grade of the existing ground level. A bottomless sand filter must be located parallel to the contours on a sloping site and be as long and narrow as possible to limit the linear loading rate on the disposal area.

I. A maintenance contract shall be required. Maintenance is to include pump inspection and cleaning, float operation (if applicable), lateral flushing annually at a minimum and septic tank and pump tank pumping as needed.
[20.7.3.812 NMAC - N, 9/1/13]

20.7.3.813 through 20.7.3.900
[RESERVED]

20.7.3.901 MONITORING:

A. As a condition to any permit, the owner of an on-site liquid waste system shall allow department personnel or maintenance service provider personnel right of entry to the property at reasonable times to allow for maintenance, system monitoring, effluent sampling or evaluating the general state of repair or function of the system.

B. Advanced treatment liquid waste systems require maintenance and monitoring. These systems shall be maintained and monitored, at a minimum, semi-annually or more as per manufacturers' recommendations.

(1) Monitoring will include all the following parameters:

- (a) dissolved oxygen (DO);
- (b) temperature;
- (c) pH;
- (d) sludge depth; and
- (e) other parameters recommended

by the manufacturers.

(2) Parameters should be measured at locations within the treatment unit that will demonstrate the effectiveness of treatment.

(3) Monitoring shall be completed utilizing field instruments including a DO meter, thermometer, pH meter, sludge

sampler or other approved instruments.

(4) Parameters and maintenance requirements shall be included in the permit application design statement and be consistent with the manufacturers' recommendations for proper operation.

(5) Field instruments shall be calibrated as per manufacturers' recommendations and a log maintained on the operation and calibration of each instrument. Logs shall be made available to the department upon request.

C. Effluent sampling shall be required for on-site liquid waste systems that do not conform to manufacturers' guidelines for field parameters pursuant to Subsection B of 20.7.3.901 NMAC, for systems where the manufacturers have not established guidelines for field parameters or for systems that the department has determined are not operating properly. Sampling shall be conducted annually or as otherwise required by the department.

(1) On-site liquid waste systems that require primary treatment levels be achieved may be sampled and analyzed or monitored as specified in the permit.

(2) On-site liquid waste systems that require secondary treatment levels be achieved may be sampled and analyzed only for 5-day BOD (BOD5) or monitored as specified in the permit. Chemical oxygen demand (COD) may be substituted for BOD5 with a calibration curve acceptable to the department.

(3) On-site liquid waste systems that require tertiary treatment levels be achieved may be sampled and analyzed only for total nitrogen or monitored as specified in the permit.

(4) On-site liquid waste systems that require disinfection may be sampled and analyzed only for E. coli or monitored as specified in the permit. In addition:

(a) when chlorine is used for disinfection, the total chlorine residual, at all times, shall be equal to or greater than 1.0 mg/l after 30 minutes detention time at peak flows; and

(b) alternative disinfection methods, such as ultraviolet light, ozone or other methods, may be used.

D. All sampling, maintenance, monitoring and analysis shall be performed by certified personnel in accordance with the most current edition of *standard methods for the examination of water and wastewater* or other methods, including field instruments, approved by the department and recommended by the manufacturer.

E. Monitoring and sampling shall occur between the hours of 7:00 am and 7:00 pm.

F. Monitoring reports, sampling records and maintenance reports/logs shall be submitted to the local field

office within 30 days of the maintenance, monitoring or required sampling event.

G. All monitoring or sampling results exceeding the permit limits shall be reported to the local field office within five working days.

H. If any two consecutive samples exceed the permitted treatment limit, the system design and operation shall be evaluated by a professional engineer or a maintenance service provider for conformance with permitting conditions and shall be adjusted to bring the effluent quality into compliance. The system shall be resampled no later than 30 days from the evaluation and results submitted to the department within five working days of analysis.

I. If the resample required in Subsection H above exceeds the permitted treatment limit, the treatment system shall be subject to review and re-evaluation with regard to operation and maintenance. A department approved contingency plan, including more training for the maintenance service provider or replacement with a more experienced operator, may be implemented.

J. The following shall be considered as violations of the monitoring requirements of the permit.

(1) Failure to collect, analyze and report maintenance, monitoring or sampling results.

(2) The submission, by the owner or maintenance entity of an advanced treatment system or agent or employee thereof, of misleading or inaccurate information to the department, through neglect.

(3) The submission of fraudulent data including the following:

(a) apparent measurement results for which no measurement or test results were actually made as determined by the absence of the supporting records that are usually made;

(b) measurements or test results obtained by deliberately and knowingly making measurements or collecting samples at places and times other than as specified in the permit or 20.7.3 NMAC; and

(c) test results obtained through use of unapproved and erroneous sampling, preservation, storage or analysis procedures.
[20.7.3.901 NMAC - Rp, 20.7.3.901 NMAC, 9/1/13]

20.7.3.902 OPERATION AND MAINTENANCE REQUIREMENTS AND EVALUATION REQUIREMENTS AT TIME OF TRANSFER:

A. The owner of an on-site liquid waste system, including systems existing prior to the effective date of this regulation, shall be responsible for properly operating and maintaining the system in accordance with the recommendations of the manufacturer or designer of the system.

B. The owner of an advanced treatment system installed after the effective date of this regulation shall enter into a department approved maintenance contract with a maintenance service provider that will assure maintenance of the system in accordance with the recommendations of the manufacturer or designer of the system. A maintenance contract shall be in effect at all times.

C. Household hazardous waste shall not be introduced into the system. Wastewater that exceeds domestic liquid waste may be treated by an appropriately designed advanced treatment system.

D. Any spillage that may occur during tank pumpout shall be cleaned up immediately and the spill area disinfected with a sodium or calcium hypochloride solution.

E. Prior to the transfer of a property with an established on-site liquid waste system, the transferor of the property shall have the system evaluated. Liquid waste systems shall be evaluated by an evaluator qualified in accordance with Subsection B of 20.7.3.904 NMAC utilizing a department approved form. Unpermitted liquid waste systems shall be registered pursuant to Subsections J of 20.7.3.401 NMAC or permitted pursuant to Subsection K of 20.7.3.401 NMAC.

F. For permitted conventional liquid waste systems, a non-invasive evaluation shall be conducted, with a report provided to the buyer. The evaluation shall determine whether or not:

(1) the treatment unit is watertight, is functioning properly and the existing tank has a liquid capacity within one tank size of the capacity required by Subsection Q of 20.7.3.201 NMAC;

(2) the disposal system appears to be functioning properly;

(3) the liquid waste system appears to meet setbacks and clearances;

(4) lot size requirements of the regulations in effect at the time of the initial installation, or in effect at the time of the most recent permitted modification, are met; and

(5) the system does not constitute a public health or safety hazard.

G. For permitted advanced treatment systems, in addition to the requirements of Subsection F of 20.7.3.902 NMAC:

(1) the system shall be sampled in accordance with permit conditions for compliance with 20.7.3.602-604 NMAC if a regularly scheduled sampling event has not occurred within 180 days of the evaluation; the sampling results shall be included with the system report; if a regularly scheduled sampling event has occurred within 180 days of the evaluation, the results of the sampling shall be included in the evaluation report;

and

(2) an amendment of permit reflecting ownership change is required pursuant to Subsection E of 20.7.3.403 NMAC.

H. Evaluations shall be recorded on forms approved by the department. Evaluation reports shall be kept on file by the evaluator of the on-site liquid waste system. Evaluators shall submit to the department copies of all evaluation reports, whether completed or not, within 15 days of the evaluation. A permit or variance application shall be submitted within 15 days of the evaluation by the party who is or will be the owner of the property on the 15th day following the evaluation to correct any deficiencies or permit violations identified by the evaluation. In addition, all evaluation reports shall include the global positioning system (GPS) coordinates of the treatment unit. Once an evaluation is requested, all results, whether complete or not, shall be submitted to the department.

I. If a final inspection with final approval for a new or modified system or a property transfer evaluation for an existing system has been done within 180 days of the transfer of the property, the property transfer evaluation need not be conducted.

J. In the event of a failed system, that includes, but is not limited to disposal fields, the owner shall remedy the failed system with department approval. In the event, property with an existing permitted on-site liquid waste system is transferred prior to the remediation of a failed system, the transferee becomes responsible under these regulations for remedying the failed system.

[20.7.3.902 NMAC - Rp, 20.7.3.902 NMAC, 9/1/13]

20.7.3.903 MAINTENANCE SERVICE PROVIDERS (MSP) FOR CONVENTIONAL AND ADVANCED ON-SITE LIQUID WASTE SYSTEMS:

A. Maintenance service providers (MSP) shall at a minimum:

(1) inspect, operate and maintain the system in accordance with the manufacturer's specification and permit requirements; and

(2) submit pumping and inspection records as requested by to the department.

B. The MSP personnel shall possess a valid and appropriate CID license when required for the specific activities performed and have at least one of the certifications listed below:

(1) certification by the manufacturer for the proprietary unit being maintained, or

(2) operator certification for small advanced wastewater systems, or higher, from the state of New Mexico; or

(3) certification at an acceptable

level as a wastewater operator from another state; or

(4) certification based on other credentials as approved by the department.

C. The MSP personnel shall have the ability to sample the unit in accordance with approved sampling methods under this part.

D. The MSP shall be able to respond to emergency situations within 48 hours of being notified.

E. A public MSP shall adopt an ordinance, bylaw or rule, as appropriate, approved by the department, detailing the terms and conditions of service.

F. A private MSP shall use a contract for service that contains, at least, minimum standards approved by the department.

G. The MSP shall have a quality assurance/quality control plan acceptable to the department and shall provide a copy to the department upon request.

H. The MSP shall notify the department within five working days of any failed system.

I. The MSP must properly maintain and sample all systems for which they have an active maintenance or sampling contract.

[20.7.3.903 NMAC - Rp, 20.7.3.903 NMAC, 9/1/13]

20.7.3.904 REQUIREMENTS FOR QUALIFICATION:

A. Qualified homeowner.

(1) A homeowner must become qualified to install an on-site liquid waste system by passing an exam administered by the department.

(2) Homeowner training materials and opportunities for exams, by appointment, shall be available at all department field offices.

(3) A qualified homeowner may apply for a permit to install or modify a conventional on-site liquid waste treatment and disposal system serving the qualified homeowner's personal residence in accordance with Subsection C of 20.7.3.401 NMAC.

(4) A qualified homeowner shall not install or modify an on-site liquid waste system serving a rental unit, or other property that is not the qualified homeowner's personal residence.

(5) A homeowner qualification shall be valid for one year from the date of issuance of qualification; the department may extend the qualification beyond one year for good cause shown.

(6) A qualified homeowner may install no more than one liquid waste system during a twelve month period.

(7) A qualified homeowner who self-installs a system shall not compensate

any person to perform any phase of the system construction, unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division.

B. Third party evaluators.

(1) Evaluations of liquid waste systems prior to property transfers are required by Subsection E of 20.7.3.902 NMAC. The department shall inspect unpermitted liquid waste systems installed after February 1, 2002. Third party evaluators shall evaluate permitted liquid waste systems and unpermitted systems installed prior to February 1, 2002.

(2) Qualification as a third party evaluator shall be based on one of the following:

(a) a valid and appropriate classification of licensure by the construction industries division of the regulation and licensing department;

(b) licensure as a professional engineer;

(c) accreditation in on-site wastewater inspection by the national sanitation foundation (NSF);

(d) certification by the national environmental health association (NEHA) as an installer of on-site wastewater treatment systems;

(e) certification as a registered environmental health specialist (REHS) or a registered sanitarian (RS); or

(f) demonstration of a similar accreditation or certification or a combination of training and experience as approved by the department.

(3) Inspection of advanced wastewater treatment systems shall be performed only by persons qualified pursuant to Subsection C of 20.7.3.904 NMAC.

C. Maintenance service provider of an advanced treatment system.

(1) Maintenance service providers shall comply with 20.7.3.903 NMAC.

(2) In order to obtain approval by the department, and in addition to receiving a recommendation for approval by the wastewater technical advisory committee, manufacturers or their authorized trainers of advanced treatment systems shall provide a written training and certification program, for approval by the department, for installers and maintenance service providers of their systems. Installers and maintenance service providers of advanced treatment systems shall receive the training approved by the department at least once per year. Department representatives may audit training classes provided by the manufacturers for the purpose of evaluating the training provided.

D. Septage pumpers.

(1) Septage pumpers shall demonstrate familiarity with applicable regulations and demonstrate competence

in locating and exposing septic tanks, measuring septic sludge and scum levels, the complete pumping of septic tank sludge, maintenance of pumping equipment in a sanitary condition, prevention of pathogen transmission and preparation of an appropriate safety plan for normal operations.

(2) Septage pumpers shall maintain his or her equipment to ensure no sewage spills occur during transport or storage and that his or her employees or the public are not subjected to a hazard to public health.

(3) Septage pumpers shall have a written contingency plan for spill abatement and shall have the equipment and supplies needed to abate spills onsite during each pumping operation.

(4) Septage pumpers shall notify the department of the facilities they use for the septage disposal and shall provide the department with copies of any permits or licenses issued by the owner of the disposal facility to the septage pumper.

E. Installer specialist.

(1) Any person who possesses all of the following minimum qualifications may apply to the department for certification as an installer specialist:

(a) a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division for the construction of on-site liquid waste systems;

(b) three years of professional experience installing on-site liquid waste systems in New Mexico; or the installation or repair of either 100 on-site liquid waste systems in New Mexico in compliance with liquid waste permits approved by the department or Bernalillo county; or 50 on-site liquid waste systems in New Mexico in compliance with liquid waste permits approved by the department or by Bernalillo county, plus certification as an installer of on-site wastewater systems by a national industry or trade organization;

(c) 16 hours of training credits approved by the department completed during the previous three calendar years;

(d) successful completion of a 20.7.3 NMAC training class and examination provided by the department during the previous twelve months;

(e) no compliance orders issued to the applicant within the past three years for violation of any provision of 20.7.3 NMAC, except for compliance orders that are presently under appeal or that have been overturned on appeal or withdrawn by the department; and

(f) no criminal convictions pursuant to NNSA 1978, Section 74-1-10 within the past five years for violation of any provision of 20.7.3 NMAC.

(2) Application for certification as

an installer specialist shall be made in writing on a form provided by the department and shall include documentation of qualification requirements in Subparagraph (a), (b) and (c) of Paragraph (1) of Subsection E of 20.7.3.904 NMAC.

(3) The department shall, within 15 working days of receipt of a complete application, notify the applicant in writing of approval or disapproval of the application.

(4) Department disapproval of an application may be appealed pursuant to the adjudicatory procedures in 20.1.5 NMAC.

(5) Installer specialist certification shall be valid for no longer than three years, expiring on January 31 of the applicable year.

(6) Installer specialist shall be recertified upon submission to the department, no later than January 31 of each applicable year, of documentation that the installer specialist has received 16 hours of approved training credits completed during the previous three calendar years.

(7) The department shall maintain on its internet website a list of training curricula that have been approved for qualification and recertification as installer specialist.

(8) The department shall accept registrations for a 20.7.3 NMAC training class and exam no less frequently than quarterly within each department district.

(9) The department shall maintain on its internet website a list of certified installer specialist, along with a description of the minimum qualification requirements for certification.

(10) Subsection E of 20.7.3.904 NMAC shall cease to be effective three years after September 1, 2013 unless the department has provided prior to that date a written report to the New Mexico environmental improvement board documenting or stating successful implementation of the installer specialist certification and recommending the Subsection E of 20.7.3.904 NMAC continue to be effective.

F. Suspensions, revocation and denials.

(1) The department may deny a qualification if it determines that an applicant does not meet all eligibility requirements set forth above.

(2) The department, at any time, may suspend or revoke a qualification for cause to include fraud, misrepresentation, failure to provide required documentation, failure to provide service in accordance with the qualification or failure to comply with 20.7.3 NMAC. Suspension or revocation shall be by issuance of an order by the department.

(3) Any person who desires to appeal a denial, suspension, revocation or disqualification may appeal to the secretary. An appeal is initiated by submitting a request

for a hearing. The request for a hearing must be in writing and made no later than 30 days after notice of the action is served. Upon such request, the secretary shall conduct a hearing pursuant to the adjudicatory procedures in 20.1.5 NMAC.
[20.7.3.904 NMAC - Rp, 20.7.3.904 NMAC, 9/1/13]

20.7.3.905 WASTEWATER TECHNICAL ADVISORY COMMITTEE: Technical product review and approval shall be in accordance with 9-7A-15 NMSA 1978.
[20.7.3.905 NMAC - Rp, 20.7.3.905 NMAC, 9/1/13]

20.7.3.906 ADMINISTRATIVE ENFORCEMENT:

A. Any violation of these regulations is a petty misdemeanor subject to criminal penalties as authorized by NMSA 74-1-10.

B. The department may appear and prosecute any misdemeanor proceeding if the appearance is by an employee authorized by the secretary to institute or cause to be instituted an action on behalf of the department.

C. The secretary, at his discretion, may elect to pursue criminal or civil penalties, or both, for any violations of these regulations.

D. Upon any violation of these regulations, the department may:

(1) issue a compliance order stating the nature of the violation requiring compliance immediately or within a specific time period and assess a civil penalty for any past or current violation or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

E. Any penalty assessed in the compliance order for residential on-site liquid waste systems shall not exceed one hundred dollars (\$100) for each violation.

F. Any penalty assessed in the compliance order for non-residential on-site liquid waste systems shall not exceed one thousand dollars (\$1000) for each violation.

G. If a violator fails to achieve compliance within the time specified in the compliance order, the secretary shall assess civil penalties of not more than one thousand dollars (\$1000) for each noncompliance with the order.

H. A compliance order issued pursuant to this section shall become final unless, no later than 30 days after the compliance order is served, the party named in the order submits a written request to the secretary for a hearing.

I. All requests for hearings shall be in accordance with 20.7.3.406 NMAC.

J. Penalties collected pursuant to violations of 20.7.3 NMAC shall be deposited in the state treasury to be credited to the general fund.

K. Any noncompliance with any provision of 20.7.3 NMAC or any permit provision may be subject to penalties.
[20.7.3.906 NMAC - Rp, 20.7.3.906 NMAC, 9/1/13]

20.7.3.907 AUTHORITY TO DISCONNECT SOURCE OF WATER SUPPLY:

After due process is provided, the department may disconnect the source of water supply to a commercial or residential unit that is served by any on-site liquid waste system that has become a failed system and that presents an imminent hazard to public health. This authority includes authority to disconnect power utilities if necessary to disconnect the source of water supply. The department shall give notice of its actions to the unit owner and the tenants affected or as otherwise provided by the law.
[20.7.3.907 NMAC - Rp, 20.7.3.907 NMAC, 9/1/13]

[20.7.3.907 NMAC - Rp, 20.7.3.907 NMAC, 9/1/13]

20.7.3.908 through 20.7.3.1000

[RESERVED]

20.7.3.1001 CONSTRUCTION:

20.7.3 NMAC shall be liberally construed to carry out its purpose.

[20.7.3.1001 NMAC - Rp, 20.7.3.1001 NMAC, 9/1/13]

20.7.3.1002 TEMPORARY PROVISIONS:

All registration certificates, permits, orders, rulings and variances issued pursuant to the regulations in effect at the time such registration certificates, permits, orders, rulings, or variances were issued shall remain in full force and effect until repealed, replaced, superseded or amended pursuant to 20.7.3 NMAC.

[20.7.3.1002 NMAC - Rp, 20.7.3.1002 NMAC, 9/1/13]

20.7.3.1003 SEVERABILITY:

If any provision or application of 20.7.3 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.7.3.1003 NMAC - Rp, 20.7.3.1003 NMAC, 9/1/13]

20.7.3.1004 REFERENCES IN OTHER REGULATIONS:

Any reference to the liquid waste treatment and disposal regulations in any other rule shall be construed as a reference to 20.7.3 NMAC.

[20.7.3.1004 NMAC - Rp, 20.7.3.1004 NMAC, 9/1/13]

20.7.3.1005 SAVINGS CLAUSE:

Repeal or supersession of prior versions of the liquid waste disposal regulations shall

not affect any administrative or judicial action for the enforcement thereof.

[20.7.3.1005 NMAC - Rp, 20.7.3.1005 NMAC, 9/1/13]

20.7.3.1006 COLLATERAL REQUIREMENTS:

Compliance with 20.7.3 NMAC does not relieve any person from the responsibility of meeting more stringent city or county regulations or ordinances or other requirements of state or federal laws governing the treatment or disposal of liquid waste.

[20.7.3.1006 NMAC - Rp, 20.7.3.1006 NMAC, 9/1/13]

20.7.3.1007 LIMITATIONS OF DEFENSE:

The existence of a valid permit for installation or modification of an on-site liquid waste system shall not constitute a defense to a violation of any section of 20.7.3 NMAC except the requirement for obtaining a permit (20.7.3.401-404 NMAC).

[20.7.3.1007 NMAC - Rp, 20.7.3.1007 NMAC, 9/1/13]

20.7.3.1008 to 20.7.3.1100 [RESERVED]

HISTORY OF 20.7.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB 73-4, Liquid Waste Disposal Regulations, filed 9/19/73.

EIB 79-7-2, Liquid Waste Disposal Regulations, filed 8/7/79.

EIB/LWDR 1, Liquid Waste Disposal Regulations, filed 10/10/85.

EIB/LWDR 2, Liquid Waste Disposal Regulations, filed 12/19/89.

History of Repealed Material: 20 NMAC 7.3, Liquid Waste Disposal (filed 10/27/95) repealed 11/30/95.

20.7.3 NMAC, Liquid Waste Disposal (filed 1/09/04) repealed 9/01/05.

Other History:

EIB/LWDR 2, Liquid Waste Disposal Regulations (filed 12/19/89) renumbered, reformatted and replaced by 20 NMAC 7.3, Liquid Waste Disposal, effective 11/30/95.

20 NMAC 7.3, Liquid Waste Disposal (filed 10/27/95) replaced by 20 NMAC 7.3, Liquid Waste Disposal, effective 10/15/97.

20 NMAC 7.3, Liquid Waste Disposal (filed 9/08/97) renumbered, reformatted, amended and replaced by 20.7.3 NMAC, Liquid Waste Disposal, effective 3/01/04.

20.7.3 NMAC, Liquid Waste Disposal (filed 1/09/04) replaced by 20.7.3 NMAC, Liquid Waste Disposal and Treatment, effective 9/01/05.

20.7.3 NMAC, Liquid Waste Disposal and Treatment (filed 7/26/05) replaced by 20.7.3 NMAC, Liquid Waste Disposal and Treatment, effective 9/1/13.

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 H U N T I N G A N D
FISHING
PART 5 U P L A N D G A M E**

19.31.5.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC,
4-1-14]

19.31.5.2 SCOPE: Hunters of
upland game. Additional requirements may
be found in Chapter 17 NMSA 1978 and
Chapters 30 and 32 through 36 of Title 19.
[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC,
4-1-14]

**19.31.5.3 S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26
NMSA 1978 provide that the New Mexico
game commission has the authority to
establish rules and regulations that it may
deem necessary to carry out the purpose of
Chapter 17 NMSA 1978 and all other acts
pertaining to protected mammals, birds, and
fish.
[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC,
4-1-14]

19.31.5.4 DURATION: April 1,
2014 through March 31, 2018.
[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC,
4-1-14]

19.31.5.5 EFFECTIVE DATE:
April 1, 2014 unless a later date is cited at
the end of individual sections.
[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC,
4-1-14]

19.31.5.6 O B J E C T I V E :
Establishing seasons on dusky grouse,
pheasant, Gambel's quail, Montezuma quail,
northern bobwhite, scaled quail, Abert's
squirrel, red squirrel, Arizona gray squirrel,
fox squirrel, eastern gray squirrel, and
setting falconry seasons.
[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC,
4-1-14]

19.31.5.7 DEFINITIONS:

A. "Aggregate" shall mean
the sum of individual game taken comprised
of several species as allowed by the bag limit
or possession limit.

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

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

D. "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 upland game
birds or mammals.

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

F. "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.

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

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

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

J. "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.

K. "Falconry" shall mean
hunting upland game using raptors.

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

M. "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.

**N. "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.

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

**P. "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.

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

R. "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.

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

**T. "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.

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

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

**W. "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.

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

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC,
4-1-14]

**19.31.5.8 LICENSE AND
APPLICATION REQUIREMENTS:**

A. License: It shall be
unlawful to hunt dusky grouse, pheasant,
quail, and squirrel without having purchased
a valid license for the current license year.

(1) For pheasant hunting on
Bernardo and W.S. Huey WMAs: in addition
to a valid license, a special permit obtained
by drawing shall be required.

(2) For pheasant hunting on private

lands in Valencia county: in addition to a valid license, a Valencia county landowner pheasant permit 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 upland game special permits shall be submitted via the department website.

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

(2) 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.

(3) Applications may be rejected if such applications do not supply adequate information.

(4) 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.

(5) All applications must be submitted via the department website unless otherwise specifically allowed by rule. Persons desiring a Valencia county landowner pheasant hunt permit must obtain an application from registered landowners. Applications must be submitted in person to only the northwest area (Albuquerque) office. Applications for the Valencia county landowner pheasant hunt permits may be submitted up to the day prior to the hunt.

(6) The application deadline for the Bernardo and W.S. Huey WMAs pheasant hunts shall be on date(s) set by the state game commission.

(7) If applications for permits exceed the number of available permits, permits shall be allotted by means of a random public drawing.

(8) 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.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 4-1-14]

19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:

A. Season and hours: Upland game may be hunted or taken only during open seasons and only during the

period from one-half hour before sunrise to one-half hour after 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 one-half hour after sunset.

(2) On waterfowl management areas (WMAs), hunting hours shall be from one-half hour before sunrise to 1:00 p.m. For the special permit pheasant hunts on W.S. Huey WMA, hunting hours shall be from one-half hour before sunrise to 4 p.m.

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

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

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any upland game, other than quail on private property, by use of bait. It shall be lawful to take quail from areas where quail feeders occur on private property.

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

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 upland game.

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

H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for pheasants, and quail:

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

(b) bows and arrows; and

(c) crossbows.

(2) The following are legal sporting arms for dusky grouse, Abert's squirrels, Arizona gray squirrels, fox squirrels, eastern gray squirrels and red squirrels:

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

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows and arrows; and

(e) crossbows

(3) Non-toxic shot is required for hunting on all state game commission owned lands. It shall be unlawful for any person hunting with a shotgun or muzzleloader on state game commission owned properties, to hunt with or be in possession of lead shot, or shotgun shells loaded with 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 foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or storage facility.

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

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

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

(2) Game taken by another: Any person may have in their possession or under their control any upland game 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 upland game, or parts thereof, and which shall contain the following:

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

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

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

(d) the date and place of the donation.

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

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

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

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

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

(4) Sale of game animal parts: Only skins, claws or feathers of legally taken upland game may be bartered or sold. The disposer must supply to the recipient a written statement which shall contain the following:

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

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

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

upland game was taken;

(d) the date and place of the transaction.

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

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

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any upland game 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 upland game from within a motor vehicle, power boat, sailboat, or aircraft.

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

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

(5) Closed roads: During the seasons established for any upland game, 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 upland 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 squirrels or upland 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 upland game animal which has clearly been wounded by the licensed mobility impaired hunter.

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 upland game, camp, or trespass upon state game commission owned lands unless allowed under regulation.

(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 W.S. Huey WMA and Seven Rivers shall be open for quail hunting on Mondays, Wednesdays, and Saturdays during established seasons. The W.S. Huey WMA shall be open to pheasant hunting by special permit only.

(b) The Brantley WMA (excluding the Seven Rivers portion, as posted) shall be open for quail and pheasant, during established seasons.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, Elliot S. Barker, and Socorro-Escondida wildlife management areas, and the Sandhills Prairie conservation area shall be open for hunting upland game during established seasons.

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

(e) The state game commission owned lesser prairie-chicken areas shall be open for quail hunting during established seasons.

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

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

(1) All state game commission owned or managed properties.

(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.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 4-1-14]

19.31.5.10 UPLAND GAME HUNTING SEASONS: Hunting seasons shall be as indicated below, listing the species, open areas, eligibility requirements or restrictions, season dates, and daily bag and possession limits.

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG (POSSESSION) LIMITS
dusky grouse	statewide	Sept. 1 – Nov. 30, 2014 Sept. 1 – Nov. 30, 2015 Sept. 1 – Nov. 30, 2016 Sept. 1 – Nov. 30, 2017	3 (6 in possession)

pheasant	statewide, excluding Valencia county	Dec. 11-14, 2014, Dec. 10 -13, 2015, Dec. 8-11, 2016, Dec. 7-10, 2017	3 (males) (6 in possession)
youth-only pheasant hunt (special draw permit required)	Bernardo WMA	Oct. 18, 2014, Oct. 17, 2015, Oct. 22, 2016 and Oct. 21, 2017	3 (males) (6 in possession)
youth-only pheasant hunt (special draw permit required)	W.S. Huey WMA	Dec. 6, 2014, Dec. 5, 2015, Dec. 3, 2016 and Dec. 2, 2017	3 (males) (6 in possession)
pheasant (special draw permit required)	W.S. Huey WMA	Dec. 13, 2014, Dec. 12, 2015, Dec. 10, 2016 and Dec. 9, 2017	3 (males) (6 in possession)
pheasant (Valencia Co.) (landowner permit required)	Valencia county private lands	Dec. 13, 2014, Dec. 12, 2015, Dec. 10, 2016 and Dec. 9, 2017	3 (males) (6 in possession)
quail: Gambel’s, scaled, northern bobwhite and Montezuma (Mearn’s)	statewide	Nov. 15 – Feb. 15, 2015 Nov. 15 – Feb. 15, 2016 Nov. 15 – Feb. 15, 2017 Nov. 15 – Feb. 15, 2018	15 (singly or in aggregate; no more than 5 shall be Mearn’s, possession shall be 30 singly or in aggregate – no more than 10 shall be Mearn’s)
squirrel: Abert’s, Arizona gray, fox, eastern gray and red squirrel	statewide	Sept. 1 – Nov. 30, 2014 Sept. 1 – Nov. 30, 2015 Sept. 1 – Nov. 30, 2016 Sept. 1 – Nov. 30, 2017	8 (singly or in aggregate, possession shall be 16 singly or in aggregate)

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 4-1-14]

19.31.5.11 [RESERVED]

19.31.5.12 HUNT CODES AND PERMIT NUMBERS FOR BERNARDO WMA AND W.S. HUEY WMA PHEASANT HUNTS AND THE VALENCIA COUNTY LANDOWNER PHEASANT HUNT:

Hunters may possess a Valencia county landowner permit in addition to another special permit pheasant hunt. Special permit pheasant hunts will be allocated by season as follows:

hunt location	2014 season	2015 season	2016 season	2017 season	hunt code	no. of permits
youth-only Bernardo WMA	10/18	10/17	10/22	10/21	PHE-0-001	20
youth-only W.S. Huey WMA	12/06	12/05	12/03	12/02	PHE-0-002	40
W.S. Huey WMA	12/13	12/12	12/10	12/09	PHE-0-005	40
Valencia county landowner permits	12/13	12/12	12/10	12/09	PHE-0-006	unlimited

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 4-1-14]

19.31.5.13 FALCONRY SEASONS:

A. Open areas and season dates: The season for dusky grouse, pheasants, quail, Abert’s squirrel, Arizona gray squirrel, fox squirrel, eastern gray squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28 annually.

B. Daily bag and possession limits: Daily bag limits for dusky grouse, pheasant, and quail shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate). Possession limits shall be: dusky grouse-6; pheasant-6; quail-30 (singly or in the aggregate); Abert’s, Arizona gray, fox, eastern gray and red squirrel-16 (singly or in the aggregate).

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

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 4-1-14]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.5 NMAC, Sections 8, 9, 10 and 12 effective 6-28-2013.

19.31.5.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt dusky grouse, pheasant, quail, and squirrel without having purchased a valid license for the current license year.

(1) For pheasant hunting on Bernardo [WMA and Seven Rivers youth-only, W.S. Huey WMA and Seven Rivers] and W.S. Huey WMAs: in addition to a valid license, a special permit obtained by drawing shall be required.

(2) For pheasant hunting on private lands in Valencia county: in addition to a valid license, a Valencia county landowner pheasant permit 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 upland game special permits shall be submitted via the department website.

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

(2) 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.

(3) Applications may be rejected if such applications do not supply adequate information.

(4) 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.

(5) All applications must be submitted via the department website unless otherwise specifically allowed by rule. Persons desiring a Valencia county landowner pheasant hunt permit must obtain an application from registered landowners. Applications must be submitted in person to only the northwest area (Albuquerque) office. Applications for the Valencia county landowner pheasant hunt permits may be submitted up to the day prior to the hunt.

(6) The application deadline for the Bernardo and W.S. Huey WMAs [~~as well as the Seven Rivers~~] pheasant hunts shall be on date(s) set by the state game commission.

(7) If applications for permits exceed the number of available permits, permits shall be allotted by means of a random public drawing.

(8) 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.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-16-2010; A, 1-31-2012; A, 7-31-2012; A, 6-28-2013]

19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:**A. Season and hours:**

Upland game may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to one-half hour after 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 one-half hour after sunset.

(2) On waterfowl management areas (WMAs), hunting hours shall be from one-half hour before sunrise to 1:00 p.m. For the special permit pheasant hunts on [~~Seven Rivers, W.S. Huey WMA and the Seven Rivers youth-only pheasant hunt~~] W.S. Huey WMA, hunting hours shall be from one-half hour before sunrise to 4 p.m.

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

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

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any upland game, other than quail on private property, by use of bait. It shall be lawful to take quail from areas where quail feeders occur on private property.

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

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 upland game.

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

H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for pheasants, and quail:

- (a) shotguns firing shot, including muzzle-loading shotguns;
- (b) bows and arrows; and
- (c) crossbows.

(2) The following are legal sporting arms for dusky grouse, Abert's squirrels, Arizona gray squirrels, fox squirrels, eastern gray squirrels and red squirrels:

- (a) shotguns firing shot, including muzzle-loading shotguns;
- (b) rimfire firearms;
- (c) muzzle-loading firearms;
- (d) bows and arrows; and
- (e) crossbows

(3) Non-toxic shot is required for hunting on all state game commission owned lands. It shall be unlawful for any person hunting with a shotgun or muzzleloader on state game commission owned properties, to hunt with or be in possession of lead shot, or shotgun shells loaded with 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 foot shall remain attached to each quail taken until the bird has arrived

at the personal abode of the possessor or storage facility.

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

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

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

(2) Game taken by another: Any person may have in their possession or under their control any upland game 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 upland game, or parts thereof, and which shall contain the following:

- (a) the kind and number of upland game parts donated;
- (b) the date and county where the upland game was lawfully taken;
- (c) the donor's name, address, and the number of the hunting license under which the upland game was lawfully taken;
- (d) the date and place of the donation.

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

- (a) zoos open for public display;
- (b) in class A parks;
- (c) in projects for scientific research and propagation;
- (d) a rehabilitation permit;
- (e) under a falconry permit, only those birds listed on the permit;
- (f) under a scientific collection permit, one may collect and possess only those species listed on the permit;
- (g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected upland game being transported.

(4) Sale of game animal parts: Only skins, claws or feathers of legally taken upland game may be bartered or sold. The disposer must supply to the recipient a written statement which shall contain the following:

- (a) description of the skin, claws, or feathers involved;
- (b) the date and county where the upland game was taken;
- (c) the disposer's name, address and hunting license number under which the upland game was taken;
- (d) the date and place of the transaction.

L. Release of wildlife: It shall be unlawful for any person or persons

to release, intentionally or otherwise, or cause to be released in this state any upland game, without first obtaining a permit from the department of game and fish.

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

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any upland game 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 upland game from within a motor vehicle, power boat, sailboat, or aircraft.

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

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

(5) Closed roads: During the seasons established for any upland game, 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 upland 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 squirrels or upland 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 upland game animal which has clearly been wounded by the licensed mobility impaired hunter.

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 upland game, camp, or trespass upon state game commission owned lands unless allowed under regulation.

(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 William S. Huey WMA and Seven Rivers shall be open for the following purposes:~~

~~(i) quail hunting only on Monday, Wednesday, and Saturday during established seasons;~~

~~(ii) pheasant hunting by special permit only.] The W.S. Huey WMA and Seven Rivers shall be open for quail hunting on Mondays, Wednesdays, and Saturdays during established seasons. The W.S. Huey WMA shall be open to pheasant hunting by special permit only.~~

(b) The Brantley WMA (excluding the Seven Rivers portion, as posted) shall be open for quail and pheasant, during established seasons.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, Elliot S. Barker, and Socorro-Escondida wildlife management areas, and the Sandhills Prairie conservation area shall be open for hunting upland game during established seasons.

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

(e) The state game commission owned lesser prairie-chicken areas shall be open for quail hunting during established seasons.

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

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

(1) All state game commission owned or managed properties.

(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.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-16-2010; A, 7-31-2012; A, 6-28-2013]

19.31.5.10 UPLAND GAME HUNTING SEASONS: Hunting seasons shall be as indicated below, listing the species, open areas, eligibility requirements or restrictions, season dates, and daily bag and possession limits.

2010-2013 seasons: all dates are 2010-2013 unless otherwise specified

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG (POSSESSION) LIMITS
dusky grouse	GS-1 GS-2	Sept. 1- Oct. 31 Oct. 1 – Nov. 30	3 (6 in possession)

pheasant	statewide, excluding Valencia county	Dec. 9-12, 2010, Dec. 8-11, 2011, Dec. 6-9, 2012, Dec. 12-15, 2013	3 (males) (6 in possession)
youth-only pheasant hunt (special draw permit required)	Bernardo WMA [& Seven Rivers]	Dec. 4, 2010, Dec. 3, 2011, Oct. 20, 2012 and Oct. 19, 2013	3 (males) (6 in possession)
youth-only pheasant hunt (special draw permit required)	W.S. Huey WMA	Dec. 7, 2013	3 (males) (6 in possession)
pheasant (special draw permit required)	[Seven Rivers &] W.S. Huey WMA	Dec. 11, 2010, Dec. 10, 2011, Dec. 8, 2012 and Dec. 14, 2013	3 (males) (6 in possession)
pheasant (Valencia Co.) (landowner permit required)	Valencia county private lands	Dec. 11, 2010, Dec. 10, 2011, Dec. 8, 2012 and Dec. 14, 2013	3 (males) (6 in possession)
quail: Gambel's, scaled, northern bobwhite and Montezuma (Mearn's)	statewide	Nov. 15 - Feb. 15	15 (singly or in aggregate; no more than 5 shall be Mearn's, possession shall be 30 singly or in aggregate – no more than 10 shall be Mearn's)
squirrel: Abert's, Arizona gray, fox, eastern gray and red squirrel	GS-1 GS-2 S-3 S-4	Sept. 1 - Oct. 31 Oct. 1 - Nov. 30 Sept. 1 - Oct. 31 Sept. 1 - Oct. 31	8 (singly or in aggregate, possession shall be 16 singly or in aggregate)

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-16-2010; A, 7-31-2012; A, 6-28-2013]

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

Hunters may possess a Valencia county landowner permit in addition to another special permit pheasant hunt. Special permit pheasant hunts will be allocated by season as follows:

hunt location	2010 season	2011 season	2012 season	2013 season	hunt code	no. of permits
youth-only Bernardo WMA	12/04	12/03	10/20	10/19	PHE-0-001	20
youth-only [Seven Rivers] W.S. Huey WMA	12/04	12/03	12/01	12/07	PHE-0-002	40
[Seven Rivers	12/11	12/10	12/08	12/14	PHE-0-004	65]
W.S. Huey WMA	12/11	12/10	12/08	12/14	PHE-0-005	40
Valencia county landowner permits	12/11	12/10	12/08	12/14	PHE-0-006	unlimited

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-16-2010; A, 7-31-2012; A, 6-28-2013]

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

This is an amendment to 8.102.100 NMAC, Section 7, effective July 1, 2013.

8.102.100.7 DEFINITIONS:

A. Definitions A-L:

(1) **Applicant:** means person applying for cash assistance on behalf of a benefit group.

(2) **Application:** means a written or electronic request, on the appropriate ISD form, [signed by or on behalf of an individual or family, for assistance] with the signature of the applicant or on the applicant's behalf by an authorized representative, for assistance.

(3) **Attendant:** means an individual needed in the home for medical, housekeeping, or child care reasons.

(4) **Authorized representative:**

means an adult, who is designated in writing by the applicant, who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and can represent the benefit group.

(5) **Basic needs:** include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(6) **Beginning month:** means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month [in any project area]. Beginning month and initial month are used interchangeably. A benefit group is budgeted prospectively in a beginning month. [A beginning month is also an initial month.]

(7) **Benefit group:** [means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependant child's

parent or relative within the fifth degree of relationship and the parent with whom the children live] means a group of people, either mandatory or optional, to be included in determining the monthly benefit amount.

(8) **Benefit month:** means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

(9) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(10) **Capital gains:** means proceeds from the sale of capital goods or equipment.

(11) **Cash assistance:** means cash payments funded by the temporary assistance for needy families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the general assistance program.

(12) **Caretaker relative:** means

an individual who assumes parental control over a child living in the home.

(13) Categorical eligibility (CE): means a [food-stamp] SNAP household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.

(a) Financial CE: Any [food stamp] SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for [food-stamp] SNAP benefits.

(b) Broad-based CE: Any [food stamp] SNAP household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.

(14) Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(15) Certification period: means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months and include an interim report to be completed mid certification.

(16) Collateral contact: means an individual or agency designated by the benefit group to provide information concerning eligibility.

(17) Conciliation process: means a 30- day process prior to imposing a sanction during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination.

(18) Conversion factor: means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.

(19) Date of application: means the date the application is received by the income support division offices during regular business hours, this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regularly scheduled business hours, holidays and weekends will be considered received as of the next business day.

(19) (20) Date of admission: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(20) (21) Date of entry: means the date established by the immigration and naturalization service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(21) (22) Department: means the human services department.

(22) (23) Dependent child: means a natural child, adopted child, stepchild or ward [who] that is:

(a) seventeen years of age or younger; or

(b) eighteen years of age and is enrolled in high school; or

(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department.

(23) (24) Director: means the director of the income support division.

(24) (25) Diversion payment: means a lump sum payment, which will enable the applicant to keep a job or to accept a bona fide offer of employment.

(25) (26) Documentation: means a written statement entered in the paper or electronic case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(26) (27) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(27) (28) Education works program (EWP): provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a [post secondary] post-secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the education works cash assistance program.

(28) (29) Emancipated: means an individual under the age of 18 years who is legally recognized as no longer under parental control due to marriage or by a decision of a court.

(29) (30) Encumbrance: means debt owed on property.

(30) (31) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(31) (32) Expedited services: means the process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the [food-stamp] SNAP program.

(32) (33) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

(33) (34) Fair hearing: means an administrative proceeding which a claimant or [his] claimant's representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

(34) (35) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

(35) (36) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(36) (37) Federal fiscal year: October 1 through September 30 of the calendar year.

(37) (38) Federal means-tested public benefit: means benefits from the [food-stamp] SNAP program; the food assistance block grant programs in Puerto Rico, American Samoa and the commonwealth of the Northern Mariana Islands, supplemental security income (SSI), and the TANF block grant program under Title IV of the Social Security Act; medicaid and SCHIP.

(38) (39) Federal poverty guidelines: means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services.

(39) (40) Five-year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States (U.S.) on or after August 22, 1996, until they continuously lived in the U.S. for five years. The count for the five year bar begins on the date the non-citizen attains qualified alien status.

(40) (41) Food Stamp Act: the Food Stamp Act of 1977 (P.L. 95-113), the Food and Nutrition Act of 2008 (P.L. 110-246), and subsequent amendments.

(41) (42) General assistance (GA) benefit group: means a benefit group in which all members receive cash assistance financed by state or local funds.

(42) (43) Government entity: includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

(43) (44) Gross income: means the total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-

employment income, and income excluded by federal law.

~~[(44)]~~ **(45) Gross income test (85 percent test):** for the benefit group to be eligible, the gross earned income of the benefit group must be less than 85 percent of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

~~[(45)]~~ **(46) Hardship extension:** means an extension of the TANF/NMW 60-month lifetime limit due to specific conditions enumerated at 8.102.410.17 NMAC.

~~[(46)]~~ **(47) Head of household:** means the payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker relative.

~~[(47)]~~ **(48) Immigrant:** means a non-citizen or an alien within the meaning found in Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

~~[(48)]~~ **(49) Immigration and naturalization service (INS):** a division of the U.S. department of justice dealing with U.S. citizenship and immigration services.

~~[(49)]~~ **(50) Impairment:** means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical, psychiatric, or both processes. To evaluate both physical and mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

~~[(50)]~~ **(51) Incapacity review unit:** means a special unit in the department that determines the status of participants for the family violence option and limited work participation status. This is also known as the IRU.

~~[(51)]~~ **(52) Individual development account program:** means an account created for eligible individuals which is established and maintained by an authorized financial institution to be used for individual development.

~~[(52)]~~ **(53) Individual development program:** means a program that establishes and administers individual development accounts and reserve accounts in order to provide financial training required by the division for account owners.

~~[(53)]~~ **(54) Ineligible alien:** means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

~~[(54)]~~ **(55) Initial month:** means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one

calendar month or longer.

~~[(55)]~~ **(56) Inquiry:** means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

~~[(56)]~~ **(57) Institution of higher education:** ~~[means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level]~~ means certain college-level institutions, such as vocational schools, trade schools, and career colleges, that award academic degrees or professional certifications.

~~[(57)]~~ **(58) Institution of post-secondary education:** means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to prepare students for gainful employment.

~~[(58)]~~ **(59) Irrevocable trust funds:** means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

~~[(59)]~~ **(60) Issuance month:** means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

~~[(60)]~~ **(61) Legal guardian:** means a ~~[judicially or parental-created]~~ legally created relationship between a child and appointed adult wherein the appointed adult acquires legal decision making authority for a child.

~~[(61)]~~ **(62) Limited work participation hours:** means the reduced work requirement hours approved by the IRU or the NMW service provider, as appropriate, after a participant has been approved for a limited work participation status.

~~[(62)]~~ **(63) Limited work participation status:** means a NMW participant has a verified condition or barrier as outlined at Subsection A of 8.102.420.11 NMAC that precludes the ability to meet the standard work requirement hours and has been approved for such status by the IRU or NMW service provider, as appropriate.

B. Definitions M-Z:

(1) Maintenance of effort (MOE): means the amount of general funds the state agency must expend annually on the four purposes of ~~[TANF]~~ temporary

assistance for needy families (TANF) to meet a minimum expenditure requirement based on a ~~[states]~~ state's historical ~~[AFDC]~~ assistance to families with dependent children (AFDC) expenditures.

(2) Medicaid: medical assistance under title XIX of the Social Security Act, as amended.

(3) Minor unmarried parent: means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(4) Month of approval: means the month the action to approve a benefit group for cash assistance is taken.

(5) Net income tests: means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(6) Net monthly income: means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(7) Non-benefit group members: means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(8) Non-cash TANF/MOE benefit or service: means non-cash TANF/MOE benefit or services include programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(9) Non-citizen U.S. national: means a person who is not an U.S. citizen but was born in an outlying possession of the U.S. on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains island or the Northern Mariana islands.

~~[(10)]~~ **(10) Notice:** means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or their authorized representative by hand, U.S. mail, professional delivery or by any electronic means. The term "written notice" and "notice" are used interchangeably.

~~[(10)]~~ **(11) Notice of adverse action (NOAA):** means a written or electronic notice that includes a statement of the action the department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability

of continued benefits, and liability of the benefit group for any ~~[overissuance]~~ over-issuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Recipients have 13 days from the mailing date or the date of electronic transmittal of the notice to request a fair hearing and to have benefits restored to their previous level.

~~[(11)]~~ **(12) NMW compliance requirements:** means the various work program activities a TANF/NMW participant is expected to attend and ~~[completed]~~ complete in order to avoid conciliation or sanction.

~~[(12)]~~ **(13) ~~[Overissuance]~~ Over-issuance:** means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

~~[(13)]~~ **(14) Parent:** means natural parent, adoptive parent, or stepparent.

~~[(14)]~~ **(15) Participant:** means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority.

~~[(15)]~~ **(16) Payment standard:** means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction, recoupment or both.

~~[(16)]~~ **(17) Permanent total disability:** means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

~~[(17)]~~ **(18) Person:** means an individual.

~~[(18)]~~ **Project area:** means the geographic area designated to a county office that is responsible for the administration of the department's programs.]

(19) Prospective budgeting: means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(20) Qualified alien status: means a person lawfully admitted into the United States under INA guidelines as defined in PROWRA of 1996.

(21) Real property: means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

(22) Recertification: means a complete review of all conditions of eligibility which are subject to change and a

redetermination of the amount of assistance payment for an additional period of time.

(23) Recipient: means a person receiving cash assistance benefits.

(24) Refugee: means a lawfully admitted individual granted conditional entry into the United States.

(25) Regular reporting: means a reporting requirement that requires a participating household to report a change within ten days of the date a change becomes known to the household.

(a) A financial change becomes known to the household when the household receives the first payment attributed to an income or resource change, or when the first payment is made for a change in an allowable expense.

(b) A non-financial change including but not limited to, a change in household composition or a change in address, becomes known to the household on the date the change takes place.

(26) Resource standard: means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and ~~[\$1500]~~ \$1,500 for liquid resources.

(27) Retrospective budgeting: means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(28) Resource planning session: means a planning session to ascertain the applicant's immediate needs and to assess the applicant's financial and non-financial options.

(29) School age: means any dependent child who turns six years prior to September first and is under 18 years of age.

(30) Secretary: means the secretary of the department.

(31) Self-employed: means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

(32) Semiannual reporting: means a reporting requirement that allows up to a 12-month certification period and requires a household to submit a report in the sixth month of a 12-month certification period or in the same month a ~~[food-stamp]~~ SNAP semiannual report is due.

(33) Services: means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

(34) Shelter for battered women and children: means a public or private

nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(35) Single-parent benefit group: means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(36) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

(37) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(38) Stale: means EBT accounts which have not been accessed, no withdrawal activity, by the household in the last 90 days from the most recent date of withdrawal.

(39) Standard of need: means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

(40) Standard work requirement hours: means the minimum number of hours in applicable core and non-core total work activities a participant must complete.

(41) State-funded alien eligible: means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

(42) Supplemental nutrition assistance program (SNAP): The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.

~~[(42)]~~ **(43) Supplemental security income (SSI):** means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

~~[(43)]~~ **(44) Temporary total disability:** means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any

employment position within the individual's current employment capacity.

[(44)] (45) Two-parent benefit group: means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

[(45)] (46) Term limits: means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

[(46)] (47) Unearned income: means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

[(47)] (48) Vehicle: means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not include any boat, trailer or mobile home used as the principal place of residence.

[(48)] (49) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application, interim report and recertification.

[(49)] (50) Vocational education: means an organized education program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advance degree. Vocational education must be provided by an educational or training organization, such as a vocational-technical school, community college, or post-secondary institution or proprietary school.

[(50)] (51) Wage subsidy program: means a subsidized employment training opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003; A, 01/01/2004; A, 02/28/2007; A/E, 07/16/2007; A, 10/31/2007; A, 08/01/2009; A, 04/01/2010; A, 04/01/2012; A, 07/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.110 NMAC, Sections 8 – 13 and 15, effective July 1, 2013.

8.102.110.8 GENERAL

A. ~~[Project area:]~~ The application for cash assistance or services shall be made to the human services department in the project area in which the applicant resides.

~~_____B:]~~ **Application form:** The application shall be ~~[in writing]~~ submitted on a form designated by the ~~[Department]~~ department either electronically or in writing and is made under oath by an applicant with whom a dependent child resides. The department shall assist an applicant in completing the application for cash assistance or services. The application must contain a statement of the age of the child; residence; a statement of property in which the applicant has an interest; a statement of the income that the applicant or other benefit group members have at the time the application is filed; a signature under penalty of perjury from the applicant; and other information required by the department.

~~[C:]~~ **B. Interview:**

(1) A face-to-face interview with the applicant shall be required in order to obtain information needed to determine eligibility, verify, and record the facts supporting the application; and to give the applicant information about department programs and program requirements. When circumstances warrant, the household shall be interviewed by telephone or another place reasonably accessible and agreeable to by the applicant and the caseworker in accordance with 8.102.110.11 NMAC.

(2) The applicant must identify all individuals living in the residence whether or not the individuals are requesting assistance. The applicant and the department shall identify all individuals who must be included in the benefit group.

(3) ~~[A home visit may be made to conduct the interview and obtain the information needed, as long as the department gives adequate prior notice of the visit.~~

(4) Other information, documents, and collateral contacts may be required to determine eligibility. Requests for verification are made in accordance with provisions set forth in 8.100.130 NMAC.

D. Resource planning session: The applicant shall be provided a resource planning session no later than 30 days after an application is filed. The department shall attempt to provide a resource planning session prior to approving the application,

but it is not mandatory. Failure to provide a resource planning session shall not impede registration or processing of the application. The focus of the resource planning session is to ascertain the applicant's immediate needs, assess the applicant's financial and non-financial options, and to provide general information about departmental assistance programs. The caseworker shall assist the applicant in exploring and accessing any other financial or non-financial options that may meet the benefit group's needs. If there is any indication that the applicant might be eligible for SSI, the relative advantages of the SSI program shall be explained and the applicant shall be referred to the local social security office.

E. EBT orientation: NMW cash assistance benefits shall be authorized and available through an electronic benefit transfer (EBT) account. The department shall provide EBT training to an applicant in order to be able to access cash assistance benefits.

F. Application processing time limit: An application for NMW cash assistance shall be processed no later than 30 days after an application is filed. No later than five days after the application is approved, a reimbursement for childcare shall be provided, subject to the appropriation and availability of state or federal funds.

[8.102.110.8 NMAC - Rp 8.102.110.8 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

8.102.110.9 RIGHT TO APPLY

A. An individual has the right to make a formal application for any cash, food or medical assistance program administered by the department, regardless of whether the individual appears to meet the conditions of eligibility. Any individual requesting information or assistance, who wishes to apply for assistance, shall be encouraged to complete the application that same day. The individual shall be informed:

(1) of the right to apply, whether or not it appears the individual may be found eligible; and

(2) that the date of application affects the benefits.

B. Availability of applications: ~~[Application forms shall be readily available for cash assistance to anyone requesting an application, and to local agencies and organizations that have regular contact with the public. Each county office is responsible for providing program applications to local agencies and organizations. If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application, the individual shall be sent an application the same day the office is contacted]~~ The department shall provide the YES- New Mexico web portal address to submit an

application online or paper applications for cash assistance to anyone requesting an application, and to local agencies and organizations that have regular contact with the public. When the department receives a request for an application for assistance, the department will either mail or hand deliver a paper application, provide the web portal address for YES-New Mexico (for online applications), or provide both as indicated by the requestor.

[8.102.110.9 NMAC - Rp 8.102.110.9 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

8.102.110.10 SUBMISSION OF THE APPLICATION FORM

A. Items completed:

To be accepted and registered, the cash assistance application, at a minimum, must be submitted on a form designated by the department either electronically or in writing, identify the benefit group member applying, the program applied for, and have a signature of a responsible benefit group member or authorized representative.

B. Who completes the application: The application form must be completed by the applicant, [the] an authorized representative, guardian, or another appropriate individual.

(1) Authorized representatives must be:

(a) designated in writing by the applicant/ head of household; and

(b) be an adult who has sufficient knowledge about the applicant's circumstances to complete the application form correctly.

(2) If an authorized representative or another appropriate individual completes an application form, the applicant must review and approve the completed form. The applicant is liable for improper payments resulting from erroneous information given by the authorized representative or another appropriate individual.

(3) The caseworker may assist in completing the form if there is no one else to help the applicant.

(4) **Application for minor children:** Application for cash assistance for minor children, including unemancipated minor parents, must be made by the adult with whom the child resides and who is assuming responsibility for the support and care of the child.

(a) If a minor parent is living in a second-chance home, maternity home, or other adult-supervised supportive living arrangement, the application must be made by the supervising adult as the authorized representative for the minor parent.

(b) An emancipated minor may file an application in the emancipated minor's own right.

C. Signature:

(1) The application form must be signed by the applicant and authorized representative if one is designated. A signature means that the applicant is verifying the information provided by the household and has read and agrees with all of the statements on the application or other form requiring a signature. A signature is the depiction of the individual's name either, handwritten, electronic or recorded telephonically. Electronic and telephonically recorded signatures are valid only if provided in a format or on a system approved by the department, which includes verification of the identity of the person providing the signature.

(2) If an applicant receives help from someone other than a caseworker in completing the form, that individual must also sign at the bottom of the form.

(3) An individual who cannot sign the individual's own name must sign the application with a mark and have it witnessed. A mark, which is not witnessed, shall not be accepted as a valid signature. A caseworker may not witness signatures on an application the caseworker will be processing.

(4) If the application is made on behalf of a child, the form shall be signed by the relative or caretaker with whom the child is living, or by the authorized representative.

(5) If the individual, relative, or caretaker has a legally appointed guardian, the guardian must complete and sign the form.

D. Where filed: ~~[An application may be filed either in person or by mail with the ISD office in the project area serving the community or county where the applicant lives. An applicant that files the application with the incorrect project area, shall be referred to the correct project area. If an applicant that completes an application that day, or has mailed an application to the incorrect project area, that project area shall accept the completed application, register it, and immediately transfer the form to the correct project area.]~~ An application may be submitted to the department in person, by mail, via facsimile or by other electronic means which may include the YES-New Mexico web portal.

E. Incomplete applications: If an application is incomplete, prompt action shall be taken by the department to notify the applicant. The individual who completed the application form must add the missing or incorrect information and initial and date the entries. All reasonable action shall be taken by the department to avoid any unnecessary delay of the applicant's eligibility determination.

F. Out-of-state applicants: An application mailed in from out of state shall be accepted, but shall not be registered until the applicant contacts

ISD to confirm presence in the state. If the applicant does not contact the ISD within 30 days, the application shall be returned to the applicant.

G. Application registration: Completed and signed in-state applications shall be registered effective the date on which the application is received during regular business hours; this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regular scheduled business hours, holidays and weekends will be considered received as of the next business day.

H. Tribal TANF programs: An application for NMW benefits received from an applicant residing in a tribal TANF service delivery area shall be accepted by ISD and registered as of the date the application was received during regular business hours. Applications that are dropped off or submitted electronically after regular scheduled business hours, holidays and weekends will be considered received as of the next business day.

(1) Effective upon implementation of a tribal TANF program, the applicant shall be required to apply for the tribal TANF program in the service delivery area in which the applicant resides.

(2) Prior to finalizing an application for NMW benefits received from an applicant residing in a tribal TANF service delivery area, the applicant shall be informed he or she must apply for tribal TANF.

(a) The applicant shall be informed in writing that the applicant must provide verification of the disposition of the applicant's tribal TANF application.

(b) The applicant shall be referred to the appropriate tribal TANF [project area] service delivery area serving the community or county in which the benefit group lives.

[8.102.110.10 NMAC - Rp 8.102.110.10 NMAC, 07/01/2001; A, 02/14/2002; A, 11/15/2007; A, 07/01/2013]

8.102.110.11 INTERVIEWS

A. Application interview: All applicants shall be interviewed in person at the local office or, when circumstances warrant, at another place reasonably accessible and agreeable to both the applicant and the caseworker. The applicant may bring any individual to the interview.

B. [Office] interview waivers: ~~Waiver of the requirement that the interview be conducted in the ISD office shall be determined on a case-by-case basis for any individual who is unable to appoint an authorized representative, has no one able to come to the office because of transportation difficulties, or similar hardships which the county office manager decides warrant a waiver of the office interview. These hardship conditions include, but are not~~

limited to: illness, care of benefit group member, prolonged severe weather, or work hours which prevent an in-office interview during work hours.] **Alternative interviews:**

(1) A cash assistance applicant shall not be required to have a face-to-face interview if the applicant is unable to appoint an authorized representative and the household has no member(s) able to come to the department due to one of the hardship conditions listed in Paragraph (2) of Subsection B this Section.

(2) **Hardship conditions:** The face-to-face interview for cash assistance households shall be waived when the applicant meets one of the following conditions:

- (a) over the age of 60;
- (b) disabled;
- (c) employed 20 or more hours per week;
- (d) has transportation difficulties;
- (e) prolonged severe weather;
- (f) other hardship identified as situations warrant, as authorized by the county director.

(3) A face-to-face interview must be granted to any recipient who requests one. If the recipient is unable to come to the office due to the issues listed in Paragraph 1 or 2 of this Subsection, then an interview may be scheduled at a location agreed upon by the caseworker and the applicant.

C. [Alternatives to office interviews: If an office interview is waived, the caseworker shall conduct a telephone interview or a home visit. Home visits shall be scheduled in advance with the benefit group as provided for at 8.100.180.17 NMAC. Waiver of the office interview shall not be justification for extending the eligibility determination deadlines.] **Home visits:** A home visit may be made to conduct the interview and obtain the information needed, as long as the department gives adequate prior notice of the visit.

D. Scheduling interviews: An interview shall be scheduled upon receipt of the application. The interview shall take place within 10 working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

E. Missed interviews: The applicant shall be responsible for scheduling a second appointment. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall not be denied until the 30th calendar day (or the next workday if the 30th is not a workday) after the application was filed.

F. Purpose and scope of interview

(1) Prior to approval there shall be an interview with the applicant. The purpose and scope of the interview shall be explained to the applicant. The interview is an official

and confidential discussion of benefit group circumstances between the applicant and the caseworker. The interview allows the caseworker to explore and clarify unclear or incomplete information reported on the application and is intended to provide the applicant with information regarding the work program, child support benefits and requirements, the temporary nature of the program, eligibility requirements, and to provide the caseworker with the necessary facts to make an accurate eligibility determination.

(2) For cash assistance cases, at initial application, a brief history shall be required in the case narrative explaining the circumstances, which led to the application. The narrative shall include information clearly describing the child's situation with respect to child support from a non-custodial parent or parents.

G. Applicant information: During the course of the interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy. The interviewer shall tell the applicant about the following:

- (1) services available and requirements which must be met under the cash assistance program and the child support enforcement programs;
- (2) school attendance and reporting requirements;
- (3) complaint and hearing procedures;
- (4) work program procedures;
- (5) work requirements;
- (6) application processing standards;
- (7) procedures in cases of overpayment or underpayment;
- (8) responsibility to report changes;
- (9) non-discrimination policy and procedures;
- (10) timeliness standards; and
- (11) semiannual reporting requirements.

[8.102.110.11 NMAC - Rp 8.102.110.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 07/01/2013]

8.102.110.12 APPLICATION PROCESSING TIME LIMITS

A. Timeliness: The caseworker shall explain time limits and the applicant's right to request an administrative hearing if the application is not processed within the applicable time limits.

B. Processing time limit: Cash assistance applications shall be completed within 30 calendar days from the date of application.

C. "Clocking" of time limits: "Clocking" of time limits begins on the day after [the completed and

signed application is received] the date of application.

D. Delayed assistance: If an eligibility determination is not made within the required time limits, the applicant shall be notified in writing of the reason for the delay. The notice shall also inform the applicant of the applicant's right to request an administrative hearing regarding the issue of ISD's failure to act within the time limits. [8.102.110.12 NMAC - Rp 8.102.110.12 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

8.102.110.13 DISPOSITION OF APPLICATION/NOTICE

A. Denials: If an application is denied, ISD shall issue a written notice to the applicant of a denial. The denial notice shall include the date of denial, reason for denial, the regulation section under which the denial was made, the applicant's right to a fair hearing concerning the denial, and the time limits for filing a fair hearing request. The notice shall also explain that the applicant may discuss the decision with the caseworker, supervisor, or county director.

B. Approvals: If the application is approved, the applicant shall be notified by mail or by electronic means which may include the YES-New Mexico web portal. The notice shall report the initial month of eligibility, amount of payment, how the payment is calculated, and the members who have been determined eligible.

C. Application withdrawal: An applicant may voluntarily withdraw the application at any time before eligibility determination. An effort shall be made to confirm the applicant's desire to withdraw the application. Applicants shall be advised that withdrawal of the application has no effect upon the right to apply for assistance in the future.

D. Tribal TANF requirements:

(1) If an applicant fails to [provided] provide documentation of denial for tribal TANF within thirty days, the NMW application shall be:

(a) held for thirty days beginning with the day after the date of application.

(b) denied on the thirtieth day or on the next [working] business day if the thirtieth is not a [workday] business day.

(2) If the applicant provides documentation of denial for tribal TANF within thirty days, ISD shall determine the cause for denial prior to processing the NMW application. Applicants who verify denial of tribal TANF within thirty days shall be processed according to current NMW policy.

(a) An applicant denied tribal TANF benefits for the following reasons shall be immediately denied NMW cash

assistance:

- (i) failure to provide information;
- (ii) failure to cooperate with the application process;
- (iii) failure to comply with any tribal TANF non-financial eligibility criteria; or if
- (iv) the benefit group is currently within a sanction period involving total benefit group ineligibility.

(b) Individuals qualifying for or receiving tribal TANF benefits shall be denied NMW cash assistance. [8.102.110.13 NMAC - Rp 8.102.110.13 NMAC, 07/01/2001; A, 02/14/2002; A, 07/01/2013]

8.102.110.15 ~~CASE RECORDS~~

~~A. Transfer of case records:~~ If a recipient moves to another county in New Mexico or to an area administered by another project area, case records shall be transferred as follows:

~~(1) Responsibilities of sending county:~~

~~(a)~~ If it is learned that a recipient has moved or plans to move to another county, the project area where the recipient is moving shall be promptly notified. The record shall not be transferred to the new project area until a definite address for the client is established.

~~(b)~~ When it has been determined that the record should be transferred, the sending county shall review the case record to be sure it is complete and updated, and enters the new address and county number on the system. If all benefit groups representing separate grants or categories included in the case record do not transfer, the portion of the case record of those leaving the project area shall be transferred.

~~(2) Responsibilities of receiving county:~~ As soon as the project area to which the recipient is moving learns from the sending county or the recipient of the recipient's plans, the receiving project area shall implement transfer-in procedures and contact the recipient to update documentation of current circumstances.

~~(3) Recertification:~~ A transfer indicates a change in a family's living arrangements which may affect eligibility or amount of payment. The case is reviewed for changes at the time of the transfer. A complete recertification shall be completed within 30 days after the transfer-in is completed.

~~(4) Transfer pending approval of application:~~ If transfer of a case record is necessary before eligibility has been determined on an application, the sending county shall transfer the pending application and associated documents to the receiving county. The receiving county shall continue the determination of eligibility based on the

new circumstances. The application shall be completed based on the original application date:

~~_____B:] [{Reserved}]~~

ELECTRONIC CASE FILE:

A. Documents in paper format will be imaged into an electronic case file (ECF). The ECF is located within the automatic system program and eligibility network (ASPEN). ASPEN will digitize the volume of paper documents received from individuals and manage them electronically in a centralized repository.

B. Implementation of the electronic document management solution provides ISD the capability to administer and manage eligibility related processes and tasks.

C. Once the existing paper case files are imaged the electronic record will be considered the official record.

[8.102.110.15 NMAC - N, 07/01/2001; A, 07/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.410 NMAC, Section 12, effective July 1, 2013.

8.102.410.12 NONCONCURRENT RECEIPT OF ASSISTANCE:

A. To be eligible for inclusion in a NMW benefit group, the individual cannot already be included in or receiving benefits from:

- (1) another department cash assistance benefit group;
- (2) an SSI grant;
- (3) a tribal TANF program or BIA-GA program;
- (4) a government-funded adoption subsidy program;
- (5) a TANF program in another state; or

(6) foster care payments as defined in Title IV of the Social Security Act.

B. An individual may not be the payee for more than one NMW cash assistance payment.

C. **Supplemental security income:**

(1) **Ongoing SSI eligibility:** A person eligible for SSI on an ongoing basis is not eligible for NMW or refugee assistance benefits on the basis of concurrent receipt of assistance. The SSI recipient is not included in the benefit group for purposes of financial assistance eligibility and benefit calculation. The income, resources, and needs of the SSI recipient are excluded in determining benefit group eligibility and payment.

(2) **SSI applicants:** An individual receiving cash assistance benefits from the department may apply for and receive SSI

benefits for the same months for which the department has already issued benefits. Cash assistance benefits issued by the department are considered in determining the amount of retroactive SSI benefits. NMW ineligibility or overpayments shall not be established for any month for which SSI issues a retroactive benefit. When verification is received that a benefit group member is approved for SSI on an ongoing basis, that member shall be immediately removed from the benefit group.

D. Subsidized adoptions:

Children in receipt of state or federal adoption subsidy payments are included as benefit group members, and their income is counted in determining eligibility and payment.

E. Other department programs:

Non-concurrent receipt of assistance limitations apply to departmental programs authorized in 8.102 NMAC, 8.106 NMAC, 8.119 NMAC, tribal TANF programs, [and] SSI, and payments for foster care under Title IV of the Social Security Act. [The food stamp program] SNAP, medicaid, LIHEAP and other similar programs are not considered concurrent assistance and shall not make an individual ineligible for cash assistance and tribal TANF programs.

[8.102.410.12 NMAC - Rp 8.102.410.12 NMAC, 07/01/2001; A, 11/15/2007; A, 07/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.460 NMAC, Section 9, effective July 1, 2013.

8.102.460.9 NMW COMPLIANCE REQUIREMENTS:

Work program requirements apply to each adult and minor head of households benefit group member whether the benefit group is a two-parent or single-parent benefit group.

A. All adult and minor head of household participants are required to complete an assessment, individual responsibility plan (IRP), work participation agreement (WPA) [and], applicable work requirement hours and timely submission of documentation showing completion of required work hours.

B. Non-compliance with the NMW requirements: Participants who are in non-compliance with any of the NMW requirements are subject to conciliation and sanction as outlined at 8.102.620 NMAC.

[8.102.460.9 NMAC - Rp, 8.102.460.12 NMAC, 04/01/2012; A, 07/01/2013]

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

This is an amendment to 8.102.500 NMAC, Section 10, effective July 1, 2013.

**8.102.500.10 D I V E R S I O N
PAYMENTS TO A NMW BENEFIT
GROUP:**

A. Purpose: The diversion payment is a [~~one-time~~] one-time cash assistance payment, that is intended to assist the benefit group alleviate a specific short-term need: to accept a bona fide offer of employment, retain employment, remedy an emergency situation or an unexpected short-term need.

B. Eligibility criteria:

(1) Applicant: Eligibility for a diversion payment shall be limited to an applicant making an initial application for cash assistance. Initial application shall not include a NMW cash assistance case which is within a six-month mandatory closure because of a third sanction. For the purposes of diversion payments, an initial applicant is one who has never received cash assistance, or one whose cash assistance case has been closed for one or more calendar months.

(a) An applicant for NMW cash assistance who meets all NMW eligibility criteria may volunteer to accept a NMW diversion payment in lieu of monthly cash assistance payments if there is no need for long-term cash assistance to meet basic needs.

(b) The caseworker shall explain the diversion program is not a supplement to other assistance but is in place of it and screen the applicant for eligibility for a diversion payment.

(c) Final approval for all diversion payments shall be made by the county director and documentation submitted to income support division central office.

(2) NMW eligibility is established:

(a) The applicant must be otherwise eligible for NMW cash assistance, except that the applicant demonstrates that monthly cash assistance to meet basic needs is not required by the benefit group because there is a means of on-going financial support, and the applicant chooses to accept a diversion payment in lieu of cash assistance to meet ongoing needs.

(b) An applicant who cannot demonstrate that monthly cash assistance to meet basic needs is not needed shall not be eligible for a diversion payment.

(3) Specific need: The applicant must make an informed choice whether cash assistance is needed to meet a specific short term need. The applicant may demonstrate a need for a specific item or type of assistance

which will allow the applicant to keep a job or accept a bona fide offer of employment, remedy and emergency situation or alleviate a short term need. Such assistance may include, cash, support services, housing, transportation, car repairs, and uniforms.

(4) Eligibility for support services: A recipient of a diversion payment shall remain eligible for support services such as child care and transportation until the end of the 12-month lock-out period, until closure of the case is requested or the participant moves out of state. A referral to the NMW work program service provider and to CYFD shall be made after the applicant signs the agreement to accept a diversion payment and payment is authorized.

(5) Verification and documentation:

(a) The applicant shall be required to provide verification of the specific item or type of assistance which will allow the applicant to meet the basic short-term need.

(b) Documentation shall be required to establish that a diversion payment may be authorized in lieu of cash assistance to meet ongoing needs. An agreement signed by the applicant shall include a description of a diversion payment, terms and conditions, lifetime limitations, availability of work program services, reason for accepting a diversion payment, any prior assistance received in or out of the state.

C. Amounts: Diversion assistance is a one time, lump sum payment. The amount of the diversion payment is as follows:

(1) one to three benefit group members: may be entitled to an amount of up to \$1,500 non-recurring payment; or

(2) four or more benefit group members: may be entitled to an amount of up to \$2,500 non-recurring payment.

D. Countable assistance: The effects a diversion payment on other categories of assistance is as follows:

(1) the receipt of a diversion payment shall be excluded from income considerations in the medicaid program; and

(2) categorical eligibility is extended to the food stamp benefit group for the lockout period, unless the benefit group requests closure or moves out of New Mexico; and

(3) an applicant who accepts a diversion payment shall be eligible for TANF funded child care assistance for the lockout period, unless the benefit group requests closure or moves out of New Mexico.

E. Limitations and conditions: An applicant may receive a diversion payment a maximum of two times during a participant's 60-month term limit.

(1) Receipt of a diversion payment does not count toward the NMW 60-month term limit for any adult included in the benefit group, unless the benefit group also

receives monthly NMW cash assistance during the period covered by the diversion payment.

(2) The acceptance of a diversion payment does not reduce the number of months in a participant's 60-month lifetime limit; however, a diversion payment can only be authorized a maximum of two times during the 60-month lifetime limit. The 60-month lifetime limit began on July 1, 1997 for any adult or minor head of the benefit group, or spouse of the minor, who received TANF since July 1997.

(3) A participant who has reached the 60-month lifetime limit is not eligible for a diversion payment. A participant who has never received a month of TANF is eligible for a diversion payment.

(4) Cash assistance lockout period:

(a) Acceptance of a diversion payment: An applicant who accepts a diversion payment shall be prohibited from participating in the NMW cash assistance program for a period of 12 months beginning in the month the diversion payment is authorized. A written agreement that defines the terms and expectations of the diversion grant; documents the reason why cash assistance to meet basic needs is not required; identifies the need for a specific type of short-term assistance; and describes the support services available to diversion participants must be signed by the participant.

(b) Receipt of a diversion payment from another state: An applicant who has accepted a diversion payment in any other state shall be prohibited from receiving NMW cash assistance or a diversion payment in New Mexico for a period of 12 months, beginning in the month the diversion payment in the other state was authorized, or for the length of the lockout period in the other state, whichever is shorter.

(5) A participant of a diversion payment is not required to comply with work program or child support enforcement requirements.

F. Re-application: A participant may apply for cash assistance during the lockout period based on the following criteria.

(1) Applying during lock-out period: An applicant who determines an inability to adhere to the terms and conditions for receipt of a diversion payment may apply for cash assistance to meet ongoing basic needs.

(a) An applicant is ineligible for cash assistance payment regardless of good cause within the first four months of receiving a diversion payment.

(b) An applicant is eligible for cash assistance payment if good cause is met at least five months after receipt of diversion payment.

(2) **Good cause:** Good cause must apply in order for an applicant to re-apply for cash assistance during the lockout period. Good cause can only be considered for applicants applying at least five months after initial receipt of a diversion payment. Good cause is not considered to exist for the first four months from initial receipt of a diversion payment. Good cause must be approved by [HRU] the department and may include, loss of employment, but not a voluntary quit or dismissal due to poor job performance or failure to meet a condition of employment; or use of an illegal substance or other drug; catastrophic illness or accident of a family member which requires an employed participant to leave employment; a victim of domestic violence; or another situation or emergency that renders an employed family member unable to care for the basic needs of the family.

G. Claims:

(1) A benefit group that receives monthly cash assistance within the 12-month lock out period shall not be subject to an overpayment if the household meets good cause.

(2) A benefit group may be subject to an overpayment if the diversion payment was issued in error and subject to recoupment as specified in 8.102.640 NMAC.

[8.102.500.10 NMAC - Rp 8.102.500.10 NMAC, 07/01/2001; Repealed, 7/17/2006; 8.102.500.10 NMAC - N, 11/15/2007; A, 08/14/2009; A, 07/01/2013]

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

This is an amendment to 8.102.510 NMAC, Section 10, effective July 1, 2013.

8.102.510.10 RESOURCE EXCLUSIONS:

A. Real property:

(1) **The home:** The value of the benefit group's home and certain other property, as defined below, is not considered in determining eligibility. The "home" is the dwelling place occupied by the benefit group. The home is considered to be occupied by the benefit group during a temporary absence from the home when there is a definite plan to return to the home and no one else is occupying it. "Home" includes, in addition to the residence building and the land upon which it is constructed, the following:

(a) a reasonable amount of land within reasonable proximity to the residence building if that land is currently used by and useful to the client;

(b) outbuildings within reasonable proximity to the residence building, such

as barn, garage and well, if the well is a principal source of water;

(c) buildings used for rental purposes if located on land contiguous to the land upon which the residence building is constructed and if these buildings cannot be divided from the residence land and sold separately;

(d) grazing permits currently being used to graze livestock owned by the client;

(e) furniture, equipment and household goods necessary for the operation and maintenance of the home.

(2) **Other real property - burial plots:** One burial plot for each person included in the benefit group; a burial plot shall consist of the space needed to bury members of the immediate family.

B. Exempt personal property: The value of the following items of personal property shall not be considered in determining eligibility for financial assistance.

(1) **Vehicles:**

(a) **Transportation to or from work/daily living:** Vehicles used for transportation of benefit group members to or from work or work activities, for daily living activities, or for transportation of goods or services shall not be considered in the determination of resources attributed to the benefit group.

(b) **Specially equipped vehicles:** A vehicle that is specially equipped for ~~the handicapped~~ those with physical impairments shall not be considered in the determination of resources attributed to the benefit group.

(2) **Exempt income:** Any income which is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income which is accumulated must be kept separately from non-exempt savings.

(3) **Funeral agreements:** The equity value of funeral agreements owned by a benefit group member. Funeral agreements include any arrangement under which prepaid funeral services are provided or cash benefits which are intended to pay for funeral services are paid upon the death of the person. Included as such agreements are contracts with funeral homes, life or burial insurance, or trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only upon the death of a named individual. There is no limit on the amount which can be disregarded.

(4) **Contingent and unliquidated claims:** A "contingent and unliquidated claim" is an as yet undetermined right of the client to receive, at some future time, a resource such as an interest in an estate not probated or damages or compensation

resulting from an accident or injury. Such a claim is not considered a resource to meet requirements if the benefit group member can demonstrate that the client has consulted an attorney, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the benefit group member is making every reasonable effort to prosecute the benefit group member's claim or to proceed with the probate. If the benefit group member can demonstrate that the client's share in an estate not probated would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

(5) **Work-related equipment exclusion:** Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1000 per individual, and remain excludable, if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

(6) **Livestock:** The value of livestock is an excluded non-liquid resource.

C. Individual development account (IDA): As defined in the Individual Development Account Act 58-30 NMSA, 1978, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility are subject to certain requirements. To be disregarded, the IDA must be designated for a qualified use and meet all requirements as follows.

(1) **IDA requirements:**

(a) the benefit group member must establish the IDA for one of the purposes listed in Paragraph (2) of the this subsection;

(b) in order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the qualified uses as designated in this section; and

(c) the IDA must be funded exclusively with income earned by a benefit group member or by contributions made by a non-benefit group member;

(d) funds withdrawn from the account and used for any purpose other than those specified under this section, will cause the account to lose its status as an excluded resource, starting with the month in which the funds are so used; the amounts withdrawn also constitute an overpayment of assistance, and must be reported and shall be recouped.

(2) **IDA qualified uses:** Allowable uses of the money withdrawn from an IDA are listed in Subparagraph (a) thru (f) of this subsection.

(a) **Post-secondary education expenses:** In order to be considered used for the qualified purpose, the post-secondary

education funds must be paid from an IDA directly to an eligible education institution, as set forth in this section. For purposes of this regulation, post-secondary education expenses include:

(i) tuition and fees required for the enrollment or attendance of a student at an eligible education institution; an eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any state; or

(ii) books, fees, supplies, and equipment required for courses of instruction at an eligible educational institution.

(b) **Business capitalization:** In order to be considered used for the qualified purpose, for business capitalization, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital, and inventory expenses. To be a qualified business, there must be a business-plan which:

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(c) **First-time home purchase by a qualified buyer:** The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to initiate purchase of the individual's first home.

(i) Only IDA's established by qualified first-time home buyers shall be disregarded. A qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(ii) The IDA may be used only for the purchase of a qualified principal residence. A qualified principal residence is one which qualifies as the principal home under Subsection 1034 the federal internal revenue [services] service's code, and the costs for which do not exceed 100 percent of the average area purchase price applicable to such residence, determined in accordance

with paragraphs (2) and (3) of Subsection 143(e) of the internal revenue [services] service's code.

~~(iii) No more than \$1500 may be accumulated in an IDA for first-time home purchase. Any amount in excess of \$1500 is considered in determining whether the benefit group meets the cash resource limit.~~

(d) **Home improvements:** Costs of major home improvements or repairs on the home of the account owner.

(e) **Death of account owner:** The amount deposited by the deceased account owner held in an IDA shall be distributed directly to the account owner's spouse. If the spouse is deceased or there is no spouse the amount shall be distributed to a dependent or other named beneficiary of the deceased. The account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

(f) **Vehicle acquisition:** Acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

D. Federally excluded resources: Certain resources are excluded pursuant to federal law. For a listing of federally excluded resources see 8.139.527 NMAC.

[8.102.510.10 NMAC - Rp 8.102.510.10 NMAC, 07/01/2001, A, 05/15/2003; A/E, 07/16/2007; A, 10/31/2007; A, 07/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.620 NMAC, Section 9, 10 and 11, effective July 1, 2013.

8.102.620.9 G R A N T DETERMINATION:

A. Determining the payment standard: The payment standard shall be determined based on the eligibility standards and requirements forth in 8.102.500.8 NMAC. The payment standard also includes the special clothing allowance.

B. Determining benefit group income: The benefit group's net countable income considered in the payment determination shall be the sum of:

- (1) gross alien sponsor income;
- (2) countable earnings after allowable deductions and disregards of benefit group members; and
- (3) gross unearned income of benefit group members.

(4) the net income calculation is rounded down removing the cents.

C. Determining the grant:

A benefit group whose countable income after allowed deductions and disregards equals or exceeds the standard of need applicable to the benefit group shall not be eligible for payment. The grant shall be a monthly benefit amount determined using the following methodology:

(1) subtract the benefit group's net countable income from the payment standard applicable to the benefit group; and

(2) further subtract the following budgetary adjustment amounts to establish the monthly benefit amount:

- | | |
|-------------------|-------|
| (a) one person | \$ 39 |
| (b) two persons | \$ 53 |
| (c) three persons | \$ 67 |
| (d) four persons | \$ 80 |
| (e) five persons | \$ 94 |
| (f) six persons | \$108 |
| (g) seven persons | \$121 |
| (h) eight persons | \$138 |

(i) for households with nine or more benefit group members, subtract an additional \$14 for each member.

[8.102.620.9 NMAC - Rp 8.102.620.9 NMAC, 07/01/2001; A, 11/15/2007; A, 01/01/2011; A, 07/01/2013]

8.102.620.10 CHILD SUPPORT AND NMW NON-COOPERATION PAYMENT SANCTIONS:

A. General:

(1) The benefit group shall be subject to a non-cooperation payment sanction under either or both of the following circumstances:

(a) failure by a benefit group member to meet NMW requirements; or

(b) failure by the adult responsible for children included in a benefit group to meet child support enforcement division (CSED) cooperation requirements or both;

(c) good cause will be evaluated based on the circumstances of each instance of non-cooperation.

(2) **Occurrence of non-cooperation:**

(a) Child support:

(i) A benefit group shall be subject to a payment sanction for failure to comply with CSED cooperation requirements, even if the adult required to cooperate with child support requirements is not included in the benefit group.

(ii) Each benefit group member that fails to cooperate with the NMW requirement is subject to a sanction and shall affect the benefit group.

(iii) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(iv) A first or second level sanction is considered to be cured upon full cooperation by the sanctioned participant or a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.

(b) NMW:

(i) A benefit group is subject to a payment sanction when a participant in the benefit group fails to cooperate with the NMW requirements absent a finding of good cause.

(ii) In a two-parent benefit group, each mandatory benefit group member that fails to cooperate with the NMW requirements is subject to a sanction that affects the benefit group's sanction level and payment.

(iii) A participant shall not be sanctioned for more than one NMW requirement element at one time. A participant may be sanctioned for the same or a different NMW requirement element only after the original sanction element is cured or reversed. A first or second level sanction may be cured upon full cooperation by the sanction participant and a sanction shall be reversed based on a hearing decision when the sanction imposed is determined to be invalid.

(iv) A participant with limited participation status may be sanctioned for failure to meet the work participation requirement rates as identified on the approved work participation agreement.

(v) An occurrence of non-cooperation shall be applied when a sanction progresses to the next sanction level as a result of the noncompliance continuing for three consecutive months without the sanctioned participant reestablishing compliance. Progression to the next sanction level shall be effective in the fourth month.

(3) Cumulative sanctions:

(a) Non-cooperation sanctions are cumulative within the benefit group and shall occur when:

(i) the participant fails to comply with the NMW and child support enforcement requirements [for a one-parent benefit group];

(ii) more than one participant in the benefit group have failed to comply with either the NMW and/or child support enforcement requirement.

(b) Cumulative sanctions, whether or not cured, shall remain the property of that benefit group participant who caused the sanction.

(i) A participant with a sanction who leaves a benefit group relieves the benefit group of that participant's sanction status.

(ii) A participant with a sanction who joins another benefit group subjects the new benefit group to any

sanction or sanction level that has not been cured prior to joining the benefit group.

(c) The benefit group's cumulative sanctions and benefit level shall be reevaluated when a sanction is cured or reversed.

(4) Progressive sanctions:

(a) Non-cooperation sanctions are progressive to both the participant and to the benefit group and shall progress to the next level for the benefit group in which the sanctioned participant resides when:

(i) a participant fails to establish compliance in three-month increments; or

(ii) a participant fails to comply with NMW or CSED requirements as a separate occurrence.

(b) A sanction that is not cured for three consecutive months shall progress until compliance is established by the participant.

(c) A participant's compliance cannot reverse the sanction level attributed to the benefit group. Any subsequent sanction is imposed at the next higher level, unless reversed by a hearing decision.

B. The conciliation process:

(1) **When conciliation is available:** Conciliation shall be available to a participant or applicant once during an occurrence of assistance. There must be a period of at least 12 months between occurrences of cash assistance in order for a conciliation to be available again to the benefit group. NMW conciliation and child support conciliation are independent and are counted separately from each other.

(2) Determining that noncompliance has occurred:

(a) The determination of noncompliance with child support shall be made by CSED. The conciliation and sanctioning process for child support noncompliance is initiated upon receipt of notice from CSED that the participant or applicant has failed to cooperate. Under 8.102.420 NMAC, the non-cooperative participant or applicant shall be individually disqualified from participation in the benefit group.

(b) The determination of noncompliance with NMW requirements shall be made by the caseworker. A finding of noncompliance shall be made if:

(i) the participant has not completed an assessment;

(ii) the participant fails or refuses to complete an IRP;

(iii) the participant fails or refuses to submit an approvable WPA;

(iv) [the participant's monthly attendance report shows fewer than the minimum required hours of participation and no other allowable hours of activity can be reasonably attributed by the caseworker towards the monthly participation

requirement] the participant fails to submit timely documentation showing completion of required work hours;

(v) the participant's monthly attendance report shows fewer than the minimum required hours of participation and no other allowable hours of activity can be reasonably attributed by the caseworker towards the monthly participation requirement.

(3) **Initiating conciliation:** Within 10 days of determining that noncompliance exists, the caseworker shall take action to initiate a conciliation, if the [participant's] participant's conciliation has not been used. A conciliation is initiated by the department or its designee issuing a conciliation notice. CSED shall determine noncompliance and notify the caseworker who shall initiate the conciliation process.

(4) **Conciliation period:** Conciliation gives a participant a 30-calendar day period to correct the current non-compliance for either a NMW participation or CSED requirement.

(a) The conciliation process is established by the department, to address the noncompliance, identify good cause for noncompliance or barriers to compliance and shall occur only once prior to the imposition of the sanction.

(i) The participant shall have ten working days from the date a conciliation notice is mailed to contact the department to initiate the conciliation process. A participant who fails to initiate the conciliation process shall have a notice of adverse action mailed to him after the tenth working day following the date on which the conciliation notice is mailed.

(ii) Participants who begin but do not complete the conciliation process shall be mailed a notice of adverse action 30 days from the date the original conciliation was initiated. The benefit group shall be subject to sanction in the month following the month the notice of adverse action expires.

(b) **Non-cooperation with CSED requirements:** When the participant has initiated the conciliation process, it is the participant's responsibility to contact CSED and to comply with requirements or to request a waiver from CSED due to good cause. If the caseworker does not receive confirmation from CSED within 30 days of issuing the conciliation notice that the participant is cooperating or has requested a waiver for good cause in accordance with 8.50.105.14 NMAC; the conciliation process shall be considered to have failed the benefit group shall be subject to payment sanctioning.

(c) The caseworker shall make the determination whether arrangements have been made to meet NMW requirements or whether there is good cause for waiving the

cooperation requirements. If arrangements to meet the requirement or to waive it have not been made by the ~~[thirtieth]~~ 30th day following issuance of the conciliation notice, the conciliation shall be considered to have failed and the participant is subject to sanctioning.

C. Sanctioning:

(1) Within 10 days of determining that a participant has failed to meet a NMW requirement, department or its designee shall issue notice of adverse action that the payment shall be reduced. The payment reduction shall take place with the first payment following expiration of the notice of adverse action.

(2) Notice of adverse action shall apply to all NMW and child support noncompliance sanctions, including those relating to the conciliation process.

(3) A participant who corrects the failure of compliance with NMW or child support enforcement requirements during the notice of adverse action 13-day time period shall not have the sanction imposed against the benefit group or payment amount. The sanction shall not count as a cumulative or progressive sanction, since the reason for the sanction was corrected during the time period of the notice of adverse action and prior to a benefit reduction being imposed. A participant who has failed to meet work participation hours cannot correct the sanction during the notice of adverse action time period.

(4) Failure to comply during the notice of adverse action 13-day time period shall cause the sanction to become effective for a minimum of one month. If the participant later complies with the NMW compliance requirements, as determined by the department, the sanction may be removed, so long as the participant has received at least one month of reduced benefit due to sanction.

~~[(5) A sanction shall be removed effective the month following the month in which the determination is made that the participant has complied with requirements.]~~

(a) A child support enforcement sanction shall be removed after CSED notifies the caseworker that the participant is in compliance with child support enforcement requirements.

(b) A NMW sanction shall be removed after the caseworker receives verification that the participant has completed an assessment; or has completed an IRP; or has completed a WPA that indicates the appropriate number of monthly hours in work activities; or has met NMW participation hours for at least 30 days; or has good cause to waive work participation requirements.

D. Sanction levels:

(1) First-level sanction:

(a) The first level sanction for

failure to comply, shall result in a sanction of 25 percent of the standard of need. The benefit group shall be given notice of the imposition of the sanction.

~~(b) [If the first level lasts for more than three months, or a participant has a second occurrence of failure to comply with NMW or CSED requirements, the sanction shall advance to a second level sanction, as described below.] A first level sanction that is not cured for three consecutive months shall progress to a second level sanction.~~

(2) Second-level sanction:

(a) The second level of sanction for failure to comply shall result in a decrease of 50 percent of the standard of need. The second level shall be initiated by:

(i) failure to comply with NMW participation or child support enforcement requirements for more than three months; or

(ii) a second occurrence of noncompliance with a NMW or CSED requirement by a participant; or

(iii) failure of a participant to comply with both CSED and NMW participation requirements simultaneously. The group shall be given concurrent notice of imposition of the second-level sanction.

~~(b) [If the second level lasts for more than three consecutive months, the sanction shall advance to level three as described below.] A second level sanction that is not cured for three consecutive months shall progress to the third level as described below.~~

(3) Third-level sanction:

(a) The third sanction level is case closure for a period of not less than six months. The group shall be given notice of adverse action prior to imposition of the sanction.

(b) Once a participant is sanctioned at the third level, any subsequent occurrence of failure to comply with NMW or CSED requirements shall immediately result in a third level sanction, and case ineligibility for six months.

E. Sanctions by other states or other programs: Participants in sanction status for failure to participate in other programs, such as the food stamp E&T program, or another state's or tribal TANF program, shall not carry that sanction status into NMW.

F. Sanctions with respect to voluntary participants: A voluntary participant is not subject to sanction for failure to participate, but shall be removed from the NMW and lose eligibility for support services.

G. Good cause:

(1) Good cause applies to timely completion of assessment, IRP, WPA, work participation rates, and cooperation with the child support enforcement division.

(2) Good cause for failure to meet the NMW requirements.

(a) Good cause may be considered to exist for no more than 30 days in the event of:

(i) family death;

(ii) hospitalization;

(iii) major injury to the participant or a benefit group member for whom the participant has been the primary caretaker;

(iv) reported domestic violence;

(v) catastrophic event;

or

(vi) it is shown the department did not provide the participant ~~[timely]~~ reasonable assistance to complete the assessment, IRP, or WPA.

(b) The participant must meet with the NMW service provider prior to the end of the 30 day period to establish a WPA for the full participation standard beginning on day 31 or must request a limited work participation status prior to the end of the 30 day period. The participant may be subject to sanction for failure to complete a WPA if a new WPA has not been established by day 31.

(i) A participant with good cause for failure to meet the NMW requirements, who expects the cause of failure to continue for more than 30 days, must contact the department to review the participant's circumstances.

(ii) Under no conditions shall good cause be granted for more than 30 days during any given reporting period.

(3) Good cause shall be considered when the department has failed to submit a notice in accordance with the requirements of adverse action notices, to the participant or provide available support services that would adversely affect the participant's ability to timely meet work participation requirements.

(4) Good cause for refusal to cooperate with the child support enforcement requirements:

In some cases it may be determined by the CSED that the TANF/NMW applicant's/recipient' refusal to cooperate is with good cause in accordance with 8.50.105.14 NMAC. Any person requesting a good cause exemption to a TANF/NMW requirement to cooperate must complete a request for a good cause exemption on a form provided by the CSED and provide any documentation requested by CSED. The request for a good cause exemption will be reviewed by the CSED and the requestor will be informed of the decision in writing. The requestor's failure or refusal to complete the form or provide the requested documentation will result in an automatic denial of the request. The department may offer assistance to complete the form or obtain the necessary

documentation, as appropriate.

(5) It is the applicant's/recipient's responsibility to inform the department if they are unable to meet the NMW compliance requirements or CSED cooperation requirements.

[8.102.620.10 NMAC - Rp 8.102.620.10 NMAC, 07/01/2001; A, 02/14/2002; A, 11/15/2007; A, 04/01/2012; A, 07/01/2013]

8.102.620.11 NON-REPORTING SANCTIONS:

A. General: The eligibility determination and payment calculation process relies upon applicants and participants to provide accurate and timely reports of information affecting their eligibility and payment. Payment sanctions for non-reporting shall be established to encourage timely and accurate reporting and to offset benefits resulting from the reporting of inaccurate or misleading information, the untimely reporting of changes, or the failure to report any required information.

B. Non-reporting sanctions:

(1) **Length of sanction:** Each non-reporting sanction shall run for a period of four months beginning with the first month in which failure to report occurred. An additional month shall be added for each additional month of non-reporting until the payment is corrected.

(2) **Definition of an occurrence of non-reporting:** An occurrence of non-reporting exists when an applicant or participant who fails to report information or reports incorrect information which results in an overpayment of cash assistance benefits for which the participant is at fault.

(3) Amount of sanction:

(a) Reporting sanctions shall be calculated at 25 percent of standard of need for the size of the benefit group being sanctioned.

(b) Reporting sanctions are not progressive. If there is another occurrence of non-reporting prior to the end of a non-reporting sanction period, the next and any subsequent non-reporting sanctions shall be consecutive and at the 25 percent level.

(c) Reporting sanctions, child support sanctions and work program sanctions shall be integrated into a single calculation to determine the final sanction amount.

(d) If a case closes during a reporting sanction period for reasons other than sanctions, the non-reporting sanction shall be suspended and resumed at the same duration the next time the case is opened.

(4) **Procedures:** The following steps shall be taken in implementing a payment sanction.

(a) The caseworker shall document and establish an overpayment claim using the department overpayment

claims procedures. The caseworker shall also determine whether the participant was at fault for the overpayment.

(b) The county director or a designated supervisor shall review the overpayment and determine the accuracy of the overpayment determination and appropriateness of the determination the participant was at fault for the overpayment. Upon determining that a non-reporting sanction is appropriate, the county director, or designated supervisor shall issue a notice of intent to sanction to be issued to the participant. Failure by the participant to contact the person issuing the notice within 10 working days allowed shall constitute waiver of conciliation rights.

(c) If the participant requests conciliation within the 10 working days of issuance of the notice, the county director or designated supervisor shall schedule a conciliation conference.

(d) The conciliation conference is conducted by the county director or designated supervisor.

(i) The caseworker shall describe the reporting error, how the amount of the overpayment is determined and the reasons for finding the participant at fault for the overpayment.

(ii) The participant shall have the opportunity to discuss the overpayment determination, the finding of fault and to show good cause why the sanction should not be imposed.

(iii) Based upon this determination, the county director or designated supervisor shall determine whether a sanction should be imposed.

(iv) The participant may represent himself or be represented by someone else. If the participant wishes to be represented by another individual, the participant must designate that individual [on a form ISD-121] in writing.

(e) Following the conference, the county director shall issue written notice stating whether or not the sanction is to be imposed, and the worker shall [effect] effect the sanction causing issuance of a notice of adverse action. The payment reduction takes effect in the month following expiration of the notice of adverse action.

(f) Participants who disagree with the sanction determination shall have fair hearing rights and access to legal adjudication through the fair hearing process.

C. Semiannual reporting:

A benefit group subject to semiannual reporting shall be subject to non-reporting sanctions as specified in Subsection L of 8.102.120.11 NMAC.

[8.102.620.11 NMAC - Rp 8.102.620.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 07/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.100 NMAC, Section 7, effective July 1, 2013.

8.106.100.7 DEFINITIONS:

A. Definitions A-L:

(1) **Adult residential shelter care home (ARSCHE):** means a shelter care home for adults that is licensed by the department of health.

(2) **Alien:** means an individual who is not a United States citizen.

(3) **Application:** means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.

(4) **Attendant:** means an individual needed in the home for medical, housekeeping or child care reasons.

(5) **Authorized beneficiary:** means the surviving spouse of a disabled adult or the caretaker of an unrelated child, who has the ability to use a deceased recipient's issued payment.

(6) **Authorized representative:** means an adult who is designated in writing by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.

(7) **Basic needs:** means food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(8) **Benefit group:** means an individual or group of individuals authorized to receive cash assistance financed by state or local funds.

(9) **Benefit month:** means the month for which cash assistance benefits are issued.

(10) **Budget month:** means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(11) **Capacity to work:** means the [affects] effects of impairment(s), work-related factors, functionality on the ability for an individual to engage in gainful employment.

(12) **Capital gains:** means the proceeds from the sale of capital goods or equipment.

~~[(13) Caretaker: means an adult who has assumed primary responsibility for the care of an unrelated child, outside the fifth degree of relationship.]~~

~~[(14)]~~ (13) **Cash assistance:** means state-funded cash assistance in the general assistance program, the adult residential [home care] shelter care home

program (ARSC), or the burial assistance program for the indigent.

(14) Categorical eligibility (CE): means a [food-stamp] SNAP household that meets one of the following conditions is considered to be CE and have limited eligibility requirements.

(a) Financial CE: Any [food stamp] SNAP household in which all members receive Title IV-A assistance (TANF), general assistance (GA), or supplemental security income (SSI) benefits is considered to be categorically eligible for [food-stamp] SNAP benefits.

(b) Broad-based CE: Any [food stamp] SNAP household, in good standing, in which at least one member is receiving a non-cash TANF/MOE funded benefit or service and household income is below 165% FPG.

(15) Certification: means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(16) Certification period: means the time period in calendar months that is assigned to a benefit group that is approved to receive cash assistance benefits.

(17) Collateral contact: means an individual or agency designated to provide information concerning eligibility.

(18) Contingency: means requirement(s) an individual must accept as a condition of [eligibility] eligibility such as, treatment available outside the GA program, unless a determination is made that good cause exists for the individual's inability to comply.

(19) Conversion factor: means anticipated monthly income received on a weekly or bi-weekly basis shall be converted to a monthly amount.

(20) Date of admission: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

(21) Date of application: means the date the application is received by the income support division offices during regular business hours, this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regularly scheduled business hours, holidays and weekends will be considered received as of the next business day.

(22) Date of authorization: means the date when action is taken to approve a cash payment for a benefit group.

(23) Date of entry: means the date established by the immigration and naturalization service as the date an alien (or sponsored alien) was admitted for permanent residence.

(24) Day(s): means working days, unless otherwise defined in this chapter.

(25) Department: means the human services department.

(26) Dependent child: means an individual who is seventeen years of age or younger; eighteen years of age and enrolled in high school; or between eighteen and twenty-two years of age and is receiving special education services regulated by the state public education department.

(27) Director: means the director of the income support division.

(28) Disability: means the definitions of disability related to the general assistance program and the disability determination process found at 8.106.420.7 NMAC.

(29) Earned income: means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(30) Emancipated: means an individual under the age of 18 who is legally recognized as no longer under parental control due to the individual's marriage, active duty in the armed forces or by [a decision-of] the order of a court.

(31) Encumbrance: means debt owed on property.

(32) Equity value: means the fair market value of property, less any encumbrances owed on the property.

(33) Essential person: means an individual responsible for the care of a disabled general assistance recipient to the extent that placement into institutional care would be required were it not for care provided by this individual.

(34) Expungement: means the permanent deletion of cash benefits from an EBT account that is stale.

(35) Fair hearing: means an administrative proceeding that a claimant or [his] the claimant's representative may request if:

(a) an application is not acted on within the application time limits at 8.106.110.12 NMAC; or

(b) an application is denied in whole or in part; or

(c) cash assistance or services are modified, terminated or not provided.

(36) Fair market value (FMV): means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or as a trade-in, not the amount the dealer would sell the vehicle for at retail.

(37) Federal act: means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(38) Federal fiscal year: means the time period beginning on October 1 and ending on September 30 of the calendar year.

(39) Federal poverty guidelines: means the level of income defining poverty by family size, published annually in the federal register by the United States department of health and human services.

(40) Gainful employment: means any job or class of jobs in the state that would provide an income equaling or exceeding 85% of the federal poverty guidelines to the benefit group.

(41) Government entity: means any federal, state, tribal or local unit of government as well as any non-government entity that receives public funds for the purpose of meeting the needs of its clientele.

(42) Gross income: means the total amount of earned or unearned income before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-employment income and income excluded by federal law.

(43) Gross income test: means the income test applied to the maximum income eligibility limit for participation in a particular cash assistance program based on the size of the household or benefit group.

(44) Head of household: means an individual who is the responsible case head for the benefit group. The head of household may be the parent, guardian, sole adult member, specified relative, pregnant woman, a recipient of general assistance, or caretaker.

(45) Immigrant: means an individual who is an alien as defined in title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act (PROWRA) and within the technical meaning at 8 U.S.C. 1101(a)(15).

(46) Ineligible alien: means an individual who does not meet the eligible alien requirements or has not been admitted for permanent residence.

(47) Initial month: means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(48) Inquiry: means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application for that program.

(49) Interim assistance reimbursement: means the program within the social security administration

that will reimburse the state through [HSD] the department for payments made to an individual receiving GA disability during the period the individual's application for SSI was pending.

(50) Institution of higher education: means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(51) Institutionalized: Living in a facility licensed as an adult residential shelter care [facility] home (ARSCH) by the New Mexico department of health.

(52) Irrevocable trust funds: means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(53) Issuance month: means the calendar month in which cash assistance is issued.

(54) Limited state funds: means that the standard of need for a one person benefit group is calculated at \$150.00 per month or less.

B. Definitions M-Z:

(1) Maintenance of effort: means the amount of general funds the state agency must expend annually on the four purposes of [TANF] temporary assistance to needy families (TANF) to meet the minimum expenditure requirement based on a state's historical [AFDC] assistance for families with dependent children (AFDC) expenditures

(2) Mandatory benefit group member: The income and resources of mandatory members will always be considered to determine need, but not payment. In order to be included in the assistance group, members must individually meet eligibility requirements. Members mandatory for inclusion are: spouses residing in the home with the applicant, a caretaker of the applicant, and the father of an unborn child residing in the home with the applicant.

(3) Medicaid: means medical assistance under title XIX of the Social Security Act, as amended.

(4) Minor unmarried parent: means an unmarried parent who is under the age of 18 years or is age 18 and enrolled in high school.

(5) Month of approval: means the first month in which a benefit group is eligible for cash assistance.

(6) Net income test: means the income test applied to eligibility for a particular program, after all allowable deductions are taken from the gross income for the household or benefit group. To be eligible, the benefit group's net earned income must be less than the standard of

need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(7) Net monthly income: means gross non-exempt income minus the allowable deductions. Net monthly income is the figure used to determine eligibility and cash assistance benefit amount.

(8) New Mexico works: means the federally funded temporary cash assistance program for needy families that carries a sixty-month term limit for adults in the state.

(9) Non-benefit group members: means persons residing with a benefit group but who are specifically excluded by regulation from being included in the benefit group certification.

(10) Non-cash TANF/MOE benefit or service: means a non-cash TANF/MOE benefit or services including programs or services that do not provide cash to recipients, but are funded by the TANF program, either by the federal TANF block grant or the state MOE share. These services may include transportation, childcare, counseling programs, parenting programs, pamphlets or referrals to other TANF/MOE-funded services.

(11) Notice: means written correspondence that is generated by any method including handwritten, typed or electronic, delivered to the client or their authorized representative by hand, U.S. mail, professional delivery or by any electronic means. The term "written notice" and "notice" are used interchangeably.

(12) Notice of adverse action (NOAA): means a written or electronic notice sent 13 days in advance of an action to reduce, suspend or terminate benefits that includes a statement of the action the department intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overpayment received if the hearing decision is adverse to the benefit group.

(13) Overpayment/overissuance over-issuance: means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(14) Parent: means a natural parent, adoptive parent, or stepparent.

(15) Payment: means the amount of the cash assistance benefit, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and before any reduction by sanction or recoupment.

(16) Permanently residing under color of law (PRUCOL): means aliens lawfully admitted for permanent

residence or permanently residing in the United States under color of law as follows.

(a) The individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the immigration and naturalization services (INS) and the INS does not contemplate enforcing the alien's departure. The INS does not contemplate enforcing an alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the aliens status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an immigration and naturalization service status other than those applicants listed in Item (vi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC or those covered under Item (xvi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC. None of the categories allow medicaid eligibility for non-immigrants; for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories[-]:

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of INS Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5) (Section 212(d)(5)) of the Immigration and Nationality Act; for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization [services] service's letter with this information or INS Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization [services] service's letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi))

and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the immigration and naturalization services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the immigration and naturalization services pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant immigration and naturalization [services] service's instructions, whose departure that agency does not contemplate enforcing; ask for a copy of INS Form I-94 or a letter from the immigration and naturalization service, or a copy of a court order establishing the alien's status;

(viii) aliens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of INS Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of INS Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8

U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state).

~~(16)~~ (17) **Person:** means an individual.

~~(17) Project area:~~ means the geographic area designated to a county office that is responsible for the administration of the department's programs.]

(18) **Prospective budgeting:** means the computation of a benefit group's eligibility and benefit amount based on an estimate of income and circumstances that will exist in the current month and future months.

(19) **Qualified alien:** includes any of the classes of immigrant status granted by USCIS below:

(a) an alien who is lawfully-admitted for permanent residence (LPR) under the Immigration and Nationality Act (INA);

(b) an alien granted asylum under section 208 of the INA;

(c) an alien admitted into the United States as a refugee under section 207 of the INA;

(d) an alien paroled into the United States for a period of at least one year under section 212(d)(5) of the INA;

(e) an alien whose deportation has been withheld under section 243(h) of the INA as in effect prior to April 1, 1997, who whose removal has been withheld under section 241(b)(3) of the INA;

(f) an alien who has been granted conditional entry pursuant to section 203(a) (7) of the INA as in effect prior to April 1, 1980;

(g) an alien who was a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of

1980;

(h) an alien, an alien parent or alien child, who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse or parent's family residing in the same home as the alien at the time of the abuse and there is a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA, as long as the alien has begun the process of becoming a lawful permanent resident under the Violence Against Women Act;

(i) an alien who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

(20) **Real property:** means land and affixed improvements and structures, which include mobile homes. Grazing permits are also considered real property.

(21) **Recertification:** means a complete review of all conditions of eligibility and a redetermination of the amount of the cash assistance benefits for an additional period of time.

(22) **Recipient:** means a person receiving cash assistance benefits.

(23) **Reconsideration:** means a re-evaluation of disability based on additional medical evidence provided by the client.

(24) **Refugee:** means a lawfully admitted individual granted conditional entry into the United States.

(25) **Resource standard:** means the financial standard with respect to an applicant's/recipient's resources and property, which is set at \$2,000 for non-liquid resources and [~~\$1,500~~] \$1,500 for liquid resources.

(26) **Retrospective budgeting:** means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(27) **Secretary:** means the secretary of the human services department.

(28) **Self-employed:** means an individual who engages in a self-managed enterprise for the purpose of providing support and income.

(29) **Semiannual reporting:** means a requirement for a benefit group to file a report of information in the sixth month of a 12-month certification period to determine if eligibility for benefits can continue.

(30) **Set term GA:** The certification period shall be for a set length of time dependent upon conditions, beginning from the month of approval and is not subject to review.

(31) **Shelter for battered women and children:** means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion

of the facility must be set aside on a long-term basis to serve only battered women and children.

(32) Single-parent benefit group: means a benefit group that does not include both parents of a child who is included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(33) Sponsor: means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(34) Sponsored alien: means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(35) Spouse: means an individual legally bound by marriage.

(36) Stale: means EBT accounts which have not been accessed (no withdrawal activity) by the household in the last 90 days from the most recent date of withdrawal.

(37) Standard of need: means the amount provided to each GA cash assistance benefit group on a monthly basis and is based on legislative funding, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR case number and expenditures, and number of pending applications.

(38) Supplemental nutrition assistance program (SNAP): The Food and Nutrition Act of 2008 changed the federal name of the food stamp program to the supplemental nutrition assistance program. SNAP is synonymous with the food stamp program.

[(38)] (39) Supplemental security income (SSI): means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 1382 of the Social Security Act.

[(39)] (40) Unavailable state funds: means the funds are not sufficient to provide all GA benefit groups with a one dollar monthly cash payment.

[(40)] (41) Unearned income: Means old age, survivors and disability insurance payments (social security); railroad retirement benefits; veterans administration compensation or pension payments; military retirement and allotments; pensions, annuities and retirement benefits; lodge or fraternal benefits; other public or private disability or retirement benefits or pension;

shared shelter payments; individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

[(41)] (42) Unrelated caretaker: means an individual who is not a specified relative within the fifth degree of relationship of a dependent child and has assumed responsibility for care, support and supervision of an unrelated child and for meeting the child's physical and emotional needs.

[(42)] (43) Unrelated child: means a minor, under 18 years of age, residing with a caretaker who is not a specified relative within the fifth degree of relationship.

[(43)] (44) Variable term GA: The certification period shall be set for a length of time, not to exceed 12 months, beginning from the month of approval and is subject to review.

[(44)] (45) Verification: means the use of third-party information or documentation to establish the accuracy of statements on the application or recertification.

[(45)] (46) Work related factors: means factors taken into account in the disability determination process such as age, education, training, work experience, language ability, appearance, marital status, living situation, as well as relevant social history and minimal employment and activities that would be required in a work setting such as sitting, standing, walking, lifting, carrying, handling, seeing, hearing, communicating and understanding and following directions.

[8.106.100.7 NMAC - Rp, 8.106.100.7 NMAC, 12/01/2009; A, 04/01/2010; A, 07/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.110 NMAC, Sections 8, 9, 10 and 11, effective July 1, 2013.

8.106.110.8 GENERAL:

[A. Project area: The application for cash assistance shall be made to the human services department in the project area in which the applicant resides:

B. Application form: The application shall be submitted [in writing] on a form designated by the department either electronically or in writing and shall be made under oath by an applicant or an applicant

on behalf of a dependent child who resides in the home. The application must contain a statement of the age of the applicant or, dependent child, residence in New Mexico, all property in which the applicant has an interest, the income of the applicant or other benefit group members at the time the application is filed; the signature of the applicant, and other information required by the department.

[8.106.110.8 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

8.106.110.9 RIGHT TO APPLY

A. An individual has the right to make a formal application for any cash, food or medical assistance program administered by the department, regardless of whether or not the individual appears to meet the conditions of eligibility. Any individual requesting information or assistance, or who wishes to apply for assistance, shall be encouraged to complete an application that same day.

B. An individual shall be informed of the right to apply, whether or not it appears the individual will be found eligible.

C. An individual shall be informed that the date of application affects the benefit amount for the first month of issuance.

D. Availability of applications: ~~[The department shall make application forms for general assistance programs readily available to anyone requesting an application, and to certain local agencies and organizations that have regular contact with the public. If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application, the individual shall be mailed an application on the same day the office is contacted.]~~ The department shall provide the YES-New Mexico web portal to submit the application online or paper applications for general assistance to anyone requesting an application and to local agencies and organizations that have regular contact with the public. Requests, written, electronic or by phone, for an application for assistance shall be provided with a mailed paper application or the YES-New Mexico web portal address to submit an online application.

[8.106.110.9 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

8.106.110.10 THE APPLICATION [FORM]:

A. Submission of an application: ~~[An application may be submitted in person, by mail, via facsimile or by other electronic means, with the ISD office in the project area where the applicant lives.]~~ An application may be submitted to the department in person, by mail, via facsimile or by other electronic means which

may include the YES-New Mexico web portal.

~~[(1)]~~ If an applicant submits the application in the wrong project area the department shall refer the applicant to the correct project area and shall complete the application process prior to transferring to the correct project area.

~~[(2)]~~ **(1) Out-of-state applicants:** An application [mailed in] received from out-of-state shall be accepted, but shall not be registered until the applicant contacts ISD to confirm his or her presence in the state. If the applicant does not contact the ISD within 30 days from receipt of the application, the application shall be returned to the applicant.

~~[(3)]~~ **(2) Application for minor children:** An application for assistance for minor children, including an un-emancipated pregnant minor, must be made by the adult with whom the child or children reside and who is assuming responsibility for the support and care of the child or children.

(a) If a pregnant minor is living in a second-chance home, maternity home or other adult-supervised supportive living arrangement, the application must be made by the supervising adult as the authorized representative for the minor pregnant woman.

(b) An emancipated minor may submit an application in the emancipated minor's own right.

B. Completeness of an application: To be accepted and registered, the cash assistance application, at a minimum, must identify the individual or individuals applying, the program(s) applied for, and must contain the signature of a responsible benefit group member, caretaker, authorized representative, or other legally responsible individual. The signature is defined as the depiction of the individual's name either handwritten, electronic or recorded telephonically. Such signature serves as intention to execute or adopt the sound, symbol, or process for the purpose of signing the related record.

(1) The application form must be completed and signed by the applicant, the authorized representative or other responsible individual.

(2) If an authorized representative or another appropriate individual completes an application form on behalf of an applicant, the actual applicant must review and approve the completed form. The applicant is liable for improper payments resulting from erroneous information given by the authorized representative or other appropriate individual.

(3) The caseworker shall assist in completing the form if there is no other individual who can help the applicant. If an application is incomplete, ISD shall take action to notify the applicant. The individual who completed the application form must

add the missing or incorrect information and initial and date the entries.

C. Application registration: A signed application shall be registered effective the date in which the application is received by the [project area] department during regular business hours; this includes applications that are dropped off, submitted in person and electronically. Applications that are dropped off or submitted electronically after regular business hours or on weekends or holidays will be considered received as of the next business day.

[8.106.110.10 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

8.106.110.11 INTERVIEWS:

A. Application interview:

(1) All applicants shall have a face to face interview [~~in the project area in which the applicant resides~~].

(2) The interview may take place at a location reasonably accessible and agreeable to both the applicant and the caseworker.

(3) The applicant may bring any individual to the interview.

(4) The interview shall take place within ten days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant.

B. Alternatives to an office interview: Waiver of the requirement that the interview be conducted in the ISD office shall be determined on a case-by-case basis for any individual who is unable to appoint an authorized representative, has no one able to accompany the applicant to the office because of transportation difficulties, or similar hardships that the county director determines warrants a waiver of the office interview. These hardship conditions include, but are not limited to: illness, care of benefit group member, prolonged severe weather, or work hours which prevent an in-office interview during work hours. If an office interview is waived, the caseworker shall conduct a telephone interview or a home visit. Home visits shall be scheduled in advance with the benefit group as provided for at 8.100.180.17 NMAC. Waiver of the office interview, in and of itself, shall not be justification for extending the eligibility determination deadlines.

C. Scheduling an

interview: An interview shall be scheduled upon receipt of the application. The interview shall take place within ten working days of the date an application is filed and, to the extent possible, at a time that is convenient for the applicant. Applications that are dropped off or submitted electronically after the close of business or on weekends or holidays will be considered received as of the next business day.

D. Missed interview: An

applicant who fails to appear for the first interview shall be responsible for scheduling a second appointment for an interview. If the applicant does not contact the office or does not appear for a rescheduled interview, the application shall be denied on the [60th] 30th day (or the next workday if the [60th] 30th day is not a workday) after the application was filed.

E. Purpose and scope of interview: The interview is an official and confidential discussion of benefit group circumstances between the applicant and the caseworker.

(1) Prior to processing an application, there shall be a face-to-face interview with the applicant. The purpose and scope of the interview shall be explained to the applicant.

(2) The interview is intended to provide the applicant with information regarding eligibility requirements for the program and to provide the caseworker with the necessary information and documentation to make an accurate eligibility determination. In addition, the interview allows the caseworker to clarify unclear or incomplete information reported on the application.

F. Applicant information: During the course of the interview steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy. The interviewer shall inform the applicant about the following:

(1) the requirements that must be met by the applicant under the requested cash assistance program;

(2) responsibility to report changes;

(3) complaint [~~and fair~~] and fair hearing procedures;

(4) application processing standards;

(5) procedures in cases of overpayment or underpayment of benefits;

(6) non-discrimination policies and procedures;

(7) timeliness standards.

[8.106.110.11 NMAC - N, 07/01/2004; A, 12/01/2009; A, 07/01/2013]

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

This is an amendment to 8.106.230 NMAC, Section 8, effective July 1, 2013.

8.106.230.8 PAYMENT ISSUANCE:

A. EBT: The department issues cash assistance benefits through an electronic benefit transfer (EBT) system. ~~[In no instance shall the department restrict or dictate the use of the money paid.]~~

B. Warrants: In some circumstances a payment can be issued by warrant.

C. Death of a recipient: An authorized beneficiary may access and use payments issued on behalf of a recipient who died before an EBT withdrawal was made if the recipient:

(1) was alive on the first day of the month for which cash assistance benefits were issued; and

(2) met all eligibility conditions at the time of death.

[8.106.230.8 NMAC - Rp, 8.106.120.8 & 9 NMAC, 12/01/2009; A, 07/01/2013]

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

This is an amendment 8.106.400 NMAC, Section 10, effective July 1, 2013.

8.106.400.10 CONSTRUCTING THE BENEFIT GROUP:

A. General: To be eligible for inclusion in a GA benefit group, a person must be individually eligible according to requirements set forth in 8.106.410 NMAC, 8.106.420 NMAC and 8.106.430 NMAC and not otherwise disqualified from participation. The person or persons meeting individual eligibility requirements and for whom an application has been or must be made constitute the benefit group.

B. Disability: The benefit group for the GA-disabled adult program consists of the disabled adult and may include the needs of other adults living in the home. An adult who shares custody of his or her biological child may apply for GA-disabled adults in his or her own right, provided that the adult who is applying has less than half time custody of the child.

(1) **Spouse:** The spouse, residing in the home with the disabled adult must be included in the benefit group to determine need, but not payment. The spouse may be included in payment if the spouse is determined disabled.

(2) **Essential person:** An

individual, regardless of relation, is considered essential to the well being of a disabled GA applicant and may be included in the GA benefit group to determine need and payment. An essential person is capable of providing the physical care needed by the GA disabled recipient to the extent that placement into institutional care would otherwise be required without this care.

(3) **Pregnant individual:** An emancipated unmarried pregnant woman, age 17 or younger, or a pregnant adult, who has not reached her third trimester and has been determined to be disabled, may be considered a benefit group member in the GA disabled adult program. The father of the unborn child that resides in the home, must be included in the benefit group to determine need, but not payment.

(4) **SSI:** An individual receiving SSI, or who would be receiving SSI except for recovery by the social security administration of an overpayment, is not eligible to be included in a GA benefit group.

C. State supplement for adult residential care: To be eligible for inclusion in an ARSCH supplemental payment benefit group, an individual must be eligible for SSI. The benefit group consists of the SSI recipient. Two SSI recipients who would constitute a family if living at home, but who reside in an adult residential shelter care facility, are considered to be two separate benefit groups.

D. Unrelated child: The benefit group for the GA-dependent child program consists of a dependent child who lives in a family setting with a non-related adult caretaker, and all of that dependent child's full, half, step- or adopted siblings living in the home. An adult caretaker may be an individual who is not a specified relative within the fifth degree of relationship and who is not eligible for NMW in his or her own right.

(1) **Caretaker:** The unrelated caretaker shall be included in the benefit group upon request. The spouse of the unrelated caretaker, if living in the home, shall be included in the benefit group when the unrelated caretaker is included in the benefit group.

(2) **Need and payment:** The unrelated caretaker and spouse shall be included in the benefit group to determine need and payment only if they request inclusion.

(3) **Fifth degree of relationship:** The following relatives are within the fifth degree of relationship to the dependent child:

(a) father (biological or adoptive);

(b) mother (biological or adoptive);

(c) grandfather, great grandfather, great-great grandfather, great-great-great grandfather;

(d) grandmother, great-

grandmother, great-great-grandmother, great-great-great grandmother;

(e) spouse of child's parent (stepparent);

(f) spouse of child's grandparent, great grandparent, great-great grandparent, great-great-great grandparent (step-grandparent);

(g) brother, half-brother, brother-in-law, stepbrother;

(h) sister, half-sister, sister-in-law, stepsister;

(i) uncle of the whole or half-blood, uncle-in-law, great uncle, great-great uncle;

(j) aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;

(k) first cousin and spouse of first cousin;

(l) son or daughter of first cousin (first cousin once removed);

(m) son or daughter of great aunt or great uncle (first cousin once removed) and spouse;

(n) nephew/niece and spouses.

(4) A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

(5) **Effect of divorce or death on relationship:** A relationship based upon marriage, such as the "in-law", or "step-" relationships, continues to exist following the dissolution of the marriage by divorce or death.

(6) Unrelated child adult only benefit group: An adult only benefit group may consist of the non-related adult caretaker when all of the dependent children are receiving SSI.

[8.106.400.10 NMAC - Rp, 8.106.400.11, 12 & 16 NMAC, 12/01/2009; A, 07/01/2013]

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

This is an amendment to 8.106.500 NMAC, Section 8, effective July 1, 2013.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

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

(1) countable resources owned by and available to the benefit group do not exceed either the ~~[\$1500 liquid or \$2000]~~ \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal

or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

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

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

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

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

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

- | | |
|-------------------|---------|
| (a) one person | \$791 |
| (b) two persons | \$1,072 |
| (c) three persons | \$1,352 |
| (d) four persons | \$1,633 |
| (e) five persons | \$1,913 |
| (f) six persons | \$2,194 |
| (g) seven persons | \$2,474 |
| (h) eight persons | \$2,755 |

(i) add \$281 for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

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

(3) **Notice:** The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children: A special clothing allowance may be issued to assist in preparing a child for

school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

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

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

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

H. Supplemental issuance: A ~~[one-time]~~ one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.314.6 NMAC, Sections 7, 9-11, 13-18 and 22 effective June 28, 2013.

8.314.6.7 DEFINITIONS:

A. AIDS waiver: A medical assistance division (MAD) home and community-based services (HCBS) waiver program for eligible recipients who are diagnosed as having acquired immunodeficiency syndrome (AIDS) or AIDS-related conditions and who meet the level of care provided in a nursing facility (NF).

B. Authorized agent: The eligible recipient may choose to appoint an authorized agent designated to have access to medical and financial information for the purpose of offering support and assisting the eligible recipient in understanding waiver services. The eligible recipient will

designate a person to act as an authorized agent by signing a release of information form indicating the eligible recipient's consent to the release of confidential information. The authorized agent will not have the authority to direct mi via waiver services. Directing services remains the sole responsibility of the eligible recipient or his/her legal representative. The eligible recipient's authorized agent does not need a legal relationship with the eligible recipient. While the eligible recipient's authorized agent can be a service provider for the eligible recipient, the authorized agent cannot serve as the eligible recipient's consultant. If the authorized agent is an employee, he/she cannot sign his/her own timesheet.

C. Authorized annual budget (AAB): The eligible recipient works with his or her consultant to develop an annual budget request which is submitted to the third party assessor (TPA) for review and approval. The total annual amount of the mi via services and goods includes the frequency, the amount, and the duration of the waiver services and the cost of waiver goods approved by the TPA. Once approved, this is the annual approved budget (AAB).

D. Brain injury (BI): Eligible recipients (through age 65) with an injury to the brain of traumatic or acquired origin resulting in a total or partial functional disability or psychosocial impairment or both. The BI eligible recipient must have a documented BI diagnosis, as included in the international classification of diseases (ICD-9-CM or its successor).

E. Category of eligibility (COE): To qualify for a medical assistance program, an applicant must meet financial criteria and belong to one of the groups that the state has defined as eligible. An eligible recipient in mi via must belong to one of the categories of eligibility (COE) described in 8.314.6.13 NMAC.

F. Centers for medicare and medicaid services (CMS): Federal agency within the United States department of health and human services that works in partnership with the states to administer medical assistance programs operated under HSD.

G. Consultant provider: May be an agency or an individual. Provides consultant and support guide services to the eligible recipient that assist the eligible recipient (or the eligible recipient's family or legal representative, as appropriate) in arranging for, directing and managing mi via services and supports, as well as developing, implementing and monitoring the service and support plan (SSP) and AAB

H. Eligible recipient: An applicant meeting the financial and medical LOC criteria who is approved to receive MAD services through the mi via program.

I. Employer of record

(EOR): The employer of record (EOR) is the individual responsible for directing the work of mi via employees, including recruiting, hiring, managing and terminating all employees. The EOR tracks expenditures for employee payroll, goods, and services. EORs authorize the payment of timesheets by the financial management agency (FMA). An eligible recipient may be his/her own EOR unless the eligible recipient is a minor, or has a plenary or limited guardianship or conservatorship over financial matters in place. An eligible recipient may also designate an individual of his or her choice to serve as the EOR, subject to the EOR meeting the qualifications specified in this rule.

J. Financial management agency (FMA): Contractor that helps implement the AAB by paying the eligible recipient's service providers and tracking expenses.

K. Home and community-based services (HCBS) waiver: A MAD program that provides alternatives to long-term care services in institutional settings. The federal government waives certain statutory requirements of the Social Security Act to allow states to provide an array of community-based options through these waiver programs.

L. Individual budgetary allotment (IBA): The maximum budget allotment available to an eligible recipient, determined by his/her established level of care (LOC) and category of eligibility. Based on this maximum amount, the eligible recipient will develop a plan to meet his/her assessed functional, medical and habilitative needs to enable the eligible recipient to remain in the community.

M. Intermediate care facilities for ~~the mentally retarded~~ (ICF/MR) individuals with intellectual disabilities (ICF/IID): Facilities that are licensed and certified by the New Mexico department of health (DOH) to provide room and board, continuous active treatment and other services for eligible MAD recipients with a primary diagnosis of intellectually disabled.

N. Legal representative: A person that is a legal guardian, conservator, power of attorney or otherwise has a court established legal relationship with the eligible recipient. The eligible recipient must provide certified documentation to the consultant provider and FMA of the legal status of the representative and such documentation will become part of the eligible recipient's file. The legal representative will have access to the eligible recipient's medical and financial information to the extent authorized in the official court documents.

O. Legally responsible individual (LRI): A legally responsible individual (LRI) is any person who has a

duty under state law to care for another person. This category typically includes: the parent (biological, legal, or adoptive) of a minor child; the guardian of a minor child who must provide care to the child; or a spouse.

P. Level of care (LOC): The level of care (LOC) required by an eligible recipient in an institution. An eligible recipient in the mi via program must be determined to need either the LOC required for admittance to a licensed nursing facility (NF) or an [ICF/MR] ICF/IID.

Q. Mi via: Mi via is the name of the Section 1915 (c) MAD self-directed HCBS waiver program through which an eligible recipient has the option to access services to allow him or her to remain in the community.

R. Reconsideration: An eligible recipient who disagrees with a clinical/medical utilization review decision or action may submit a written request to the TPA for reconsideration of the decision. The eligible recipient may submit the request for a reconsideration through the consultant or the consultant agency or may submit the request directly to MAD.

S. Self-direction: The process applied to the service delivery system wherein the eligible recipient identifies, accesses and manages the services (among the state-determined waiver services and goods) that meet his or her assessed therapeutic, rehabilitative, habilitative, health or safety needs to support the eligible recipient to remain in his or her community.

T. Service and support plan (SSP): A plan that includes waiver services that meet the eligible recipient's needs include: the projected amount, the frequency and the duration of the waiver services; the type of provider who will furnish each waiver service; other services the eligible recipient will access; and the eligible recipient's available supports that will complement waiver services in meeting his or her needs.

U. Support guide: A function of the consultant provider that directly assists the eligible recipient in implementing the SSP to ensure access to mi via services and supports and to enhance success with self-direction. Support guide services provide assistance to the eligible recipient with employer/vendor functions or with other aspects of implementing his/her SSP.

V. Third-party assessor (TPA): The contractor who determines and re-determines LOC and medical eligibility for mi via services. The TPA also reviews the eligible recipient's SSP and approves an AAB for the eligible recipient. The TPA performs utilization management duties of all waiver services.

W. Waiver: A program in

which the federal government has waived certain statutory requirements of the Social Security Act to allow states to provide an array of home and community-based service options through MAD as an alternative to providing long-term care services in an institutional setting.

[8.314.6.7 NMAC - Rp, 8.314.6.7 NMAC, 10-15-12; A, 6-28-13]

8.314.6.9 MI VIA HOME AND COMMUNITY-BASED SERVICES WAIVER:

A. New Mexico's self-directed waiver program known as mi via is intended to provide a community-based alternative to institutional care that allows an eligible recipient to have control over services and supports. Mi via provides self-directed home and community-based services to eligible recipients who are living with disabilities, conditions associated with aging, certain traumatic or acquired brain injuries (BI), acquired immunodeficiency syndrome (AIDS), developmental disabilities (DD), or medically fragile conditions (MF). (See 42 CFR 441.300.)

B. Mi via is comprised of two MAD home and community-based waivers established under Section 1915(c) of the Social Security Act. One waiver is specifically for eligible recipients who meet the LOC otherwise provided in a nursing facility (NF). The second waiver is specifically for eligible recipients who meet the LOC otherwise provided in an [ICF/MR] ICF/IID.

(1) Both waivers are managed as a single self-directed program and are administered collaboratively by the DOH and HSD/MAD. MAD is responsible for the daily administration of mi via for eligible recipients living with disabilities, conditions associated with aging, and certain traumatic or acquired brain injuries who meet the LOC for admittance to an NF. DOH is responsible for the daily administration of mi via for eligible recipients living with developmental disabilities and medically fragile conditions who meet the LOC for admittance to an [ICF/MR] ICF/IID. The DOH also manages the waiver for eligible recipients living with AIDS who meet the LOC for admittance to an NF.

(2) Enrollment in mi via is limited to the number of federally authorized unduplicated eligible recipients and funding appropriated by the New Mexico legislature for this purpose.

[8.314.6.9 NMAC - Rp, 8.314.6.9 NMAC, 10-15-12; A, 6-28-13]

8.314.6.10 MI VIA CONTRACTED ENTITIES AND PROVIDERS SUPPORTING SELF-DIRECTED SERVICES:

The following resources and services have been established

to assist eligible recipients to self-direct services. These include the following.

A. Consultant services:

Consultant services are direct services intended to educate, guide and assist the eligible recipient to make informed planning decisions about services and supports, to develop a service and support plan (SSP) that is based on the eligible recipient's assessed disability-related needs and to assist the eligible recipient with quality assurance related to the SSP and AAB.

B. Third-party assessor:

The TPA or MAD's designee is responsible for determining medical eligibility through an LOC assessment, assigning the applicable individual budgetary allotment (IBA), approving the SSP and authorizing an eligible recipient's annual budget in accordance with mi via rules and service standards. The TPA:

(1) determines medical eligibility using the LOC criteria in 8.314.6.13 NMAC; LOC determinations are done initially for eligible recipients who are newly enrolled to the mi via waiver and thereafter at least annually for currently enrolled mi via eligible recipients; the LOC assessment is done in person with the eligible recipient in his/her home, an agreed upon location or in an inpatient setting; the TPA may re-evaluate the LOC more often than annually if there is an indication that the eligible recipient's condition or LOC has changed;

(2) applies the information from the LOC documentation and the following assessments, long-term care assessment abstract [~~NF or ICF/MR~~] (NF or ICF/ID), the comprehensive individual assessment (CIA), the universal assessment tool (UAT), or other state approved assessment tools, as appropriate for the category of eligibility, to assign the IBA for the eligible recipients that are medically eligible; and

(3) reviews and approves the SSP and the annual budget request resulting in an AAB, at least annually or more often if there is a change in the eligible recipient's circumstances in accordance with mi via rules and service standards.

C. Financial management agent (FMA):

The FMA acts as the intermediary between the eligible recipient and the MAD payment system and assists the eligible recipient or the EOR with employer-related responsibilities. The FMA pays employees and vendors based upon an approved SSP and AAB. The FMA assures the eligible recipient and program compliance with state and federal employment requirements, monitors, and makes available to the eligible recipients and reports related to utilization of services and budget expenditures. Based on the eligible recipient's approved individual SSP and AAB, the FMA must:

(1) verify that the recipients are eligible for MAD services prior to making

payment for services;

(2) receive and verify that all required employee and vendor documentation and qualifications are in compliance with the mi via rules and service standards;

(3) establish an accounting for each eligible recipient's AAB;

(4) process and pay invoices for goods, services, and supports approved in the SSP and the AAB and supported by required documentation;

(5) process all payroll functions on behalf of the eligible recipients and EORs including:

(a) collect and process timesheets of employees;

(b) process payroll, withholding, filing, and payment of applicable federal, state and local employment-related taxes and insurance; and

(c) track and report disbursements and balances of the eligible recipient's AAB and provide a monthly report of expenditures and budget status to the eligible recipient and his/her consultant, and quarterly and annual documentation of expenditures to MAD;

(6) receive and verify provider agreements, including collecting required provider qualifications;

(7) monitor hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month;

(8) answer inquiries from the eligible recipients and solve problems related to the FMA's responsibilities; and

(9) report any concerns related to the health and safety of the eligible recipient's or that the eligible recipient is not following the approved SSP and AAB to the consultant provider, MAD and DOH, as appropriate.

[8.314.6.10 NMAC - Rp, 8.314.6.10 NMAC, 10-15-12; A, 6-28-13]

8.314.6.11 QUALIFICATIONS FOR ELIGIBLE INDIVIDUAL EMPLOYEES, INDEPENDENT PROVIDERS, PROVIDER AGENCIES, AND VENDORS:

A. Requirements for individual employees, independent providers, provider agencies and vendors:

In order to be approved as an individual employee, an independent provider, including non-licensed homemaker/companion workers, a provider agency (excluding consultant providers which are covered in a different subsection) or a vendor, including those that provide professional services, each entity must meet the general and service specific qualifications set forth in this rule and submit an employee or vendor enrollment packet, specific to the provider or vendor type, for approval to the FMA. In order to be an authorized provider for mi via

and receive payment for delivered services, the provider must complete and sign an employee or vendor provider agreement and all required tax documents. The provider must have credentials verified by the eligible recipient or the EOR and the FMA. Prior to rendering services to a MAD eligible mi via recipient, an individual seeking to provide services as a homemaker/direct support, respite, community direct/support/navigation, employment supports, and customized in-home living support worker (1) must obtain an internal revenue service (IRS)-SS8 letter determining the worker's status as an independent contractor or as an employee; (2) provide to the FMA and CA the IRS SS-8 letter. If the IRS SS-8 letter either determines or informs the worker that he or she meets the status of an independent contractor, the CA must submit the SSP changes to the TPA. Once the SSP is approved the independent contractor may begin the enrollment process with the FMA." In order to be an authorized consultant provider for the mi via program, the provider must have approved provider agreements executed by the DOH/developmental disabilities supports division (DDSD) and MAD.

B. General qualifications:

(1) Individual employees, independent providers, including non-licensed homemaker/companion workers and provider agencies (excluding consultant providers) who are employed by a mi via eligible recipient to provide direct services shall:

(a) be at least 18 years of age;

(b) be qualified to perform the service and demonstrate capacity to perform required tasks;

(c) be able to communicate successfully with the eligible recipient;

(d) pass a nationwide caregiver criminal history screening pursuant to NMSA 1978, Section 29-17-2 et seq. and 7.1.9 NMAC and an abuse registry screen pursuant to NMSA 1978, Section 27-7a-1 et seq. and 8.11.6 NMAC;

(e) complete training on critical incident, abuse, neglect, and exploitation reporting;

(f) complete training specific to the eligible recipient's needs; an assessment of training needs is determined by the eligible recipient or his/her legal representative; the eligible recipient is also responsible for providing and arranging for employee training and supervising employee performance; training expenses for paid employees cannot be paid for with the eligible recipient's AAB; and

(g) meet any other service specific qualifications, as specified in this rule and service standards.

(2) Vendors, including those providing professional services:

(a) shall be qualified to provide the

service;

(b) shall possess a valid business license, if applicable;

(c) if professional providers, required to follow the applicable licensing regulations set forth by the profession; refer to the appropriate New Mexico board of licensure for information regarding applicable licenses;

(d) if consultant providers, meet all of the qualifications set forth in 8.314.6.11 NMAC;

(e) if currently approved waiver providers, are to be in good standing with the appropriate state agency; and

(f) meet any other service specific qualifications, as specified in the mi via rules.

(3) Relatives or legal representatives, except LRIs (e.g., parents of minor children or spouses) may be hired and paid for provision of waiver services (except consultant/support guide, assisted living, and customized community supports services); payment is made to the eligible recipient's relative or legal representative for services provided when the relative/legal representative is qualified and approved to provide the service; the services must be identified in the approved SSP and AAB, and the eligible recipient or his/her legal representative is responsible for verifying that services have been rendered by completing, signing and submitting documentation, including the timesheet, to the FMA; relatives/legal representatives must provide services within the limits of the approved SSP and AAB and may not be paid in excess of 40 hours in a consecutive seven-day period; LRIs, legal representatives or relatives may not be both a paid employee for the eligible recipient and serve as his/her EOR.

(4) Individuals with legal responsibility to provide care (LRI), e.g., the parent (biological, legal or adoptive) of a minor child (under age 18) or a spouse of the eligible recipient, may be hired and paid for provision of waiver services (except consultant/support guide, assisted living, and customized community supports services) under extraordinary circumstances in order to assure the health and welfare of the eligible recipient, to avoid institutionalization when approved by MAD and provided that MAD is eligible to receive federal financial participation (FFP).

(a) Extraordinary circumstances include the inability of the LRI to find other qualified, suitable caregivers when the LRI would otherwise be absent from the home and, thus, the caregiver must stay at home to ensure the eligible recipient's health and safety.

(b) LRIs may not be paid for any services that they would ordinarily perform in the household for individuals of the same

age who do not have a disability or chronic illness.

(c) Services provided by LRIs must:

(i) meet the definition of a service or support and be specified in the eligible recipient's approved SSP and AAB;

(ii) be provided by a parent or spouse who meets the provider qualifications and training standards specified in the waiver and his rule for that service; and

(iii) be paid at a rate that does not exceed that which would otherwise be paid to a provider of a similar service, and be approved by the TPA.

(d) An LRI who is a service provider must comply with the following:

(i) a parent, parents in combination, or a spouse, may not provide more than 40 hours of services in a consecutive seven-day period; for parents of the eligible recipient, 40 hours is the total amount of service regardless of the number of eligible recipients under the age of 21 who receive services through the mi via waiver;

(ii) planned work schedules must be identified in the approved SSP and AAB, and variations to the schedule must be reported to the eligible recipient's consultant and noted and supplied to the FMA when billing; and

(iii) timesheets and other required documentation must be maintained and submitted to the FMA for hours paid.

(e) An eligible recipient must be offered a choice of providers. There must be written approval from MAD when an eligible CoLTS (c) or BI recipient, or from DOH when an eligible DOH AIDS, DD or MF recipient chooses his or her spouse as a provider. This written approval must be documented in the SSP.

(f) Eligible recipients 16 years of age or older must be offered a choice of provider. There must be written approval from MAD when an eligible CoLTS (c) or BI recipient or from DOH when an eligible DOH AIDS, DD and MF recipient chooses his or her parent as a provider. This written approval must be documented in the SSP.

(g) The FMA monitors, on a monthly basis, hours billed for services provided by the LRI and the total amounts billed for all goods and services during the month.

(5) Once enrolled, providers, vendors and contractors receive a packet of information from the eligible recipient or FMA, including billing instructions, and other pertinent materials. Mi via eligible recipients or legal representatives are responsible for ensuring that providers, vendors and contractors have received these materials and for updating them as new materials are received from the state MAD for CoLTS (c), and BI or DOH for AIDS,

DD, and MF). MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, an eligible recipient or legal representative, or provider, vendor or contractor receives instruction on how to access these documents. It is the responsibility of the eligible recipient or legal representative, or provider, vendor, or contractor to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The eligible recipient or legal representative, or provider, vendor, or contractor must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials.

(a) No provider of any type may be paid in excess of 40 hours within the established work week for any one eligible recipient or EOR.

(b) No provider agency is permitted to perform both LOC assessments and provide any services for the eligible recipients.

(c) Providers may market their services, but are prohibited from soliciting eligible recipients under any circumstances.

(6) The EOR is the individual responsible for directing the work of the eligible recipient's employees. MAD encourages an eligible recipient 18 years of age or older to be his or her own EOR. It is also possible to designate someone else to act as the EOR.

(a) An eligible recipient that is the subject of a plenary or limited guardianship or conservatorship may not be his or her own EOR.

(b) A person under the age of 18 years may not be an EOR.

(c) An EOR who lives outside New Mexico shall reside within 100 miles of the New Mexico state border. If the eligible recipient wants to have an EOR who resides beyond this radius, the eligible recipient must obtain written approval from MAD (when an eligible CoLTS (c) or BI recipient) or from DOH (when an eligible DOH AIDS, DD or MF recipient) prior to the EOR performing any duties. This written approval must be documented in the SSP.

(d) The eligible recipient's provider may not also be his/her EOR.

(e) An EOR whose performance compromises the health, safety or welfare of the eligible recipient, may have his/her status as an EOR terminated.

(f) An EOR may not be paid for any other services utilized by the eligible recipient for whom he or she is the EOR, whether as an employee of the eligible recipient, a vendor, or an employee or contactor of an agency. An EOR makes important determinations about what is in the best interest of the eligible recipient, and should not have any conflict of interest. An EOR assists in the management of the eligible recipient's budget and should have no personal benefit connected to the services requested or approved on the budget.

C. Service specific qualifications for consultant services providers: In addition to general requirements, a consultant provider shall ensure that all individuals hired or contracted consultant services meet the criteria specified in this section in addition to as well to perform all applicable rules and service standards.

(1) Consultant providers shall:

(a) possess a minimum of a bachelor's degree in social work, psychology, human services, counseling, nursing, special education or a closely related field, and have one year of supervised experience working with the elderly or people living with disabilities; or

(b) have a minimum of six years of direct experience related to the delivery of social services to the elderly or people living with disabilities, and be employed by an enrolled mi via consultant provider agency; and

(c) complete all required mi via orientation and training courses.

(2) Consultant providers may also use non-professional staff to carry out support guide functions. Support guides provide more intensive supports, as detailed in the service section of these rules. Support guides help the eligible recipient more effectively self-direct services when there is an identified need for this type of assistance. Consultant providers shall ensure that non-professional support staff:

(a) are supervised by a qualified consultant as specified in this regulation;

(b) have experience working with seniors or people living with disabilities;

(c) demonstrate the capacity to meet the eligible recipient's assessed needs related to the implementation of the SSP;

(d) possess knowledge of local resources, community events, formal and informal community organizations and networks;

(e) are able to accommodate a varied, flexible and on-call type of work schedule in order to meet the needs of the eligible recipient; and

(f) complete training on self-direction and incident reporting.

D. Service specific qualifications for personal plan facilitation

providers: In addition to general requirements, a personal plan facilitator agency must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements. Personal plan facilitators must possess the following qualifications in addition to the general qualifications:

(1) have at least one year of experience working with persons with disabilities; and

(2) be trained and certified in the planning tool(s) used; and

(3) have at least one year experience in providing the personal plan facilitation service.

E. Service specific qualification for living supports providers: In addition to general requirements, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) Qualifications of homemaker/direct support service providers: Homemaker agencies must be certified by the MAD or its designee. Home health agencies must hold a New Mexico home health agency license. Homemaker/home health agencies must hold a current business license when applicable, and meet financial solvency, training, records management, and quality assurance rules and requirements.

(2) Qualifications of home health aide service providers: Home health agency/homemaker agencies must hold a New Mexico current home health agency, rural health clinic, or federally qualified health center license. Home health aides must have successfully completed a home health aide training program, as described in 42 CFR 484.36(a)(1) and (2); or have successfully completed a home health aide training program pursuant to 7.28.2.30 NMAC. Home health aides must also be supervised by a registered nurse licensed in New Mexico. Such supervision must occur at least once every 60 calendar days in the eligible recipient's home, and shall be in accordance with the New Mexico Nurse Practice Act and be specific to the eligible recipient's SSP.

(3) Qualifications of assisted living providers: Assisted living providers must be licensed as an adult residential care facility by DOH pursuant to 7.8.2 NMAC, and meet all the requirements and regulations set forth by DOH as an adult residential care facility pursuant to 7.8.2 NMAC et seq.

(4) Qualifications of customized in-home living supports providers: The individual customized living provider must have at least one year of experience working with people with disabilities. Provider agencies must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements.

Customized living agency staff must have one year of experience working with people with disabilities.

F. Service specific qualifications for community membership support providers: In addition to general requirements, the following types of providers must meet additional qualifications specific to the type of services provided. Community access provider agencies providing community direct support services must hold a current business license, and meet financial solvency, training, records management, and quality assurance rules and requirements.

(1) Qualifications of supported employment providers:

(a) Job developers must have experience as a job developer for at least one year; have experience for at least one year developing and using job and task analyses; have experience for at least one year working with the division of vocational rehabilitation (DVR), a traditional DD waiver employment provider, an independent living center or other organization that provides employment supports or services for people with disabilities; and be trained on the purposes, functions and general practices of entities such as the department of workforce solutions navigators, one-stop career centers, business leadership network, chamber of commerce, job accommodation network, small business development centers, retired executives and New Mexico employment institute.

(b) Job coaches must have experience as a job coach for at least one year in the state of New Mexico; have experience for at least one year using job and task analyses; be trained on the Americans with Disabilities Act (ADA); and be trained on the purpose, function and general practices of the DVR office.

(2) Qualifications of customized community supports providers: Adult habilitation agency staff must have at least one year of experience working with individuals with disabilities. Adult day health provider agencies must be licensed by DOH as an adult day care facility pursuant to 7.13.2 NMAC. Adult day health agency staff must have at least one year of experience working with individuals with disabilities.

G. Service specific qualifications for providers of health and wellness supports: In addition to the general qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) Qualifications of extended state plan skilled therapy providers for adults: Physical and occupational therapists, speech/language pathologists, and physical therapy assistants must possess a therapy license in their respective field from the New Mexico regulation and licensing department (RLD). Certified occupational therapy

assistants must possess an occupational therapy assistant certification from the New Mexico RLD. Speech clinical fellows must possess a clinical fellow license from the New Mexico RLD.

(2) **Qualifications of behavior support consultation providers:** Behavior consultant provider agencies shall have a current business license issued by the state, county or city government, if required. Behavior consultant provider agencies shall comply with all applicable federal, state, and waiver rules and procedures regarding behavior consultation. Providers of behavior support consultation services must possess qualifications in at least one of the following areas: licensed psychiatrist, licensed clinical psychologist, licensed psychologist associate, (masters or Ph.D. level), licensed independent social worker (LISW), licensed master social worker (LMSW), licensed professional clinical counselor (LPCC), licensed professional counselor (LPC), licensed psychiatric nurse (MSN/RNCS), licensed marriage and family therapist (LMFT), or licensed practicing art therapist (LPAT). Providers of behavior support consultation must maintain a current New Mexico license with the appropriate professional field licensing body.

(3) **Qualifications of nutritional counseling providers:** Nutritional counseling providers must maintain a current registration as dietitians by the commission on dietetic registration of the American dietetic association.

(4) **Qualifications of private duty nursing providers for adults:** Direct nursing services are provided by individuals who are currently licensed as registered or practical nurses by the New Mexico state board of nursing.

(5) **Qualifications of specialized therapy providers:** Specialized therapy providers must possess a current New Mexico state license, as applicable, in at least one of the following areas:

- (a) acupuncture and oriental medicine;
- (b) biofeedback or a health care profession whose scope of practice includes biofeedback, and appropriate specialized training and clinical experience and supervision;
- (c) chiropractic medicine;
- (d) cognitive rehabilitation therapy or a health care profession whose scope of practice includes cognitive rehabilitation therapy, and appropriate specialized training and clinical experience and supervision;
- (e) hippotherapy or a health care profession whose scope of practice includes hippotherapy, and appropriate specialized training and experience;
- (f) massage therapy;
- (g) naprapathic medicine;
- (h) play therapy or a behavioral

health profession whose scope of practice includes play therapy, a master's degree or higher behavioral health degree, and specialized play therapy training and clinical experience and supervision; or

(i) Native American healers are individuals who are recognized as traditional healers within their communities.

H. **Service specific qualifications for other supports providers:** In addition to the general qualifications, the following types of providers must meet additional qualifications specific to the type of services provided.

(1) **Qualifications of transportation providers:** Individual transportation providers must possess a valid New Mexico driver's license with the appropriate classification, be free of physical or mental impairment that would adversely affect driving performance, have no driving while intoxicated (DWI) convictions or chargeable (at fault) accidents within the previous two years, have current CPR/first aid certification; and be trained on DOH/division of health improvement (DHI) critical incident reporting procedures and have a current insurance policy and vehicle registration. Transportation vendors must hold a current business license and tax identification number. Each agency will ensure drivers meet the following qualifications:

- (a) possess a valid, appropriate New Mexico driver's license;
- (b) be free of physical or mental impairment that would adversely affect driving performance;
- (c) have no DWI convictions or chargeable (at fault) accidents within the previous 24 months;
- (d) have current CPR/first aid certification;
- (e) be trained on DOH/DHI critical incident reporting procedures;
- (f) have a current insurance policy and vehicle registration; and
- (g) each agency will ensure vehicles have a current basic first aid kit in the vehicle.

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

(3) **Qualifications of respite providers:** Respite services may be provided by eligible individual respite providers; licensed registered (RN) or practical nurses (LPN); or respite provider agencies. Individual RN/LPN providers must be licensed by the New Mexico state board of nursing as an RN or LPN. Respite provider agencies must hold a current business license, and meet financial solvency, training, records management and

quality assurance rules and requirements.

(4) **Qualifications of related goods vendors:** Related goods vendors must hold a current business license for the locale they are in and a tax ID for the state and federal government.

(5) **Qualifications of environmental modifications providers:** Environmental modification providers must possess an appropriate plumbing, electrician, contractor or other appropriate license. [8.314.6.11 NMAC - Rp, 8.314.6.11 NMAC, 10-15-12; A, 6-28-13]

8.314.6.13 ELIGIBILITY REQUIREMENTS FOR RECIPIENT ENROLLMENT IN MI VIA: Enrollment in mi via is contingent upon the applicant meeting the eligibility requirements as described in the mi via rules, the availability of funding as appropriated by the New Mexico legislature, and the number of federally authorized unduplicated eligible recipients. When sufficient funding as well as waiver positions [is] are available, the appropriate state administering agency will offer the opportunity to eligible recipients to apply for mi via. Once an allocation has been offered to the applicant, he/she must meet certain medical and financial criteria in order to qualify for mi via enrollment. Eligible recipients must meet the following eligibility criteria: financial eligibility criteria determined in accordance with 8.290.500 NMAC, and the eligible recipient must meet the LOC required for admittance to an NF or an [HCF/MR] ICF/IID and additional specific criteria as specified in the categories below.

[A. ~~Developmental disability:~~ Eligible recipients who have a severe chronic disability, other than mental illness, that:

- ~~(1) is attributable to intellectual disabilities or physical impairment, including the result of trauma to the brain, or a combination of intellectual disabilities and physical impairments;~~
- ~~(2) is manifested before the person reaches the age of 22 years;~~
- ~~(3) is expected to continue indefinitely;~~
- ~~(4) results in substantial functional limitations in three or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency;~~
- ~~(5) reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other supports and services that are of life-long or extended duration and are individually planned and coordinated;~~
- ~~(6) the eligible recipient must have a developmental disability and intellectual disability or a specific related condition;~~

related conditions as determined by the DOH/developmental disabilities supports division (DDSD); and—

(7) the eligible recipient must require an ICF/MR LOC.]

A. Developmental disability: Eligible recipients who have:

(1) an intellectual disability: An individual is considered to have MR/ID if she/he has significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(2) a specific related condition: An individual is considered to have a specific related condition if she/he has a severe chronic disability, other than mental illness, that meets all of the following conditions:

(a) is attributable to:
(i) cerebral palsy or seizure disorder; or

(ii) is attributable to autistic disorder (as described in the fourth edition of the diagnostic and statistical manual of mental disorders); or

(iii) is attributable to chromosomal disorders (e.g. down), syndrome disorders, inborn errors of metabolism, or developmental disorders of the brain formation limited to the list in Paragraph (3) below;

(b) results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to individuals with ID;

(c) is manifested before the person reaches age 22 years;

(d) is likely to continue indefinitely; and

(e) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

(3) have a disorder of one or more of the following:

(a) **chromosomal disorders:** autosomes: 4p-, trisomy 4p, trisomy 8, 5p-, 9p-, trisomy 9p, trisomy 9p mosaic, partial trisomy 10q, 13q-, ring 13, trisomy 13 (Patau), 18p-, 18q-, trisomy 18 (Edwards), trisomy 20p, G (21,22) monosomy/deletion, trisomy 21 (down), translocation 21 (down), "cat-eye" syndrome; Prader-Willi syndrome (15);

(i) **x-linked mental retardation:** Allan syndrome; Atkin syndrome; Davis syndrome; Fitzsimmons syndrome; fragile x syndrome; fragile x phenotype (no fragile site); Gareis syndrome; glycerol kinase deficiency; Golabi syndrome; Homes syndrome; Juberg syndrome; Lujan syndrome; Renpenning syndrome; Schimke syndrome; Vasquez syndrome; nonspecific

x-linked mental retardation;

(ii) other x chromosome disorders: xo syndrome (Turner); xyy syndrome; xxy syndrome (Klinefelter); xxy syndrome; xxxy syndrome; xxxx syndrome; xxxxy syndrome; xxxxx syndrome (penta-x);

(b) **syndrome disorders:**

(i) **neurocutaneous disorders:** ataxia-telangiectasia (Louis-Bar); basal cell nevus syndrome; dyskeratosis congenital; ectodermal dysplasia (hyperhidrotic type); ectromelia ichthyosis syndrome; focal dermal hypoplasia (Goltz); ichthyosis-hypogonadism syndrome; incontinentia pigmenti (Bloch-Sulzberger); Ito syndrome; Klippel-Trenauney syndrome; linear sebaceous nevus syndrome; multiple lentigines syndrome; neurofibromatosis (Type 1); poikiloderma (Rothmund-Thomsen); Pollitt syndrome; Sjogren-Larsen syndrome; Sturge-Weber syndrome; tuberous sclerosis; xeroderma pigmentosum;

(ii) **muscular disorders:** Becker muscular dystrophy; chondrodystrophic myotonia (Schwartz-Jampel); congenital muscular dystrophy; Duchenne muscular dystrophy; myotonic muscular dystrophy;

(iii) **ocular disorders:** Aniridia-Wilm's tumor syndrome; anophthalmia syndrome (x-linked); Leber amaurosis syndrome; Lowe syndrome; microphthalmia-corneal opacity-spasticity syndrome; Norrie syndrome; oculocerebral syndrome with hypopigmentation; retinal degeneration-trichomegaly syndrome; septo-optic dysplasia;

(iv) **craniofacial disorders:** acrocephaly-cleft lip-radial aplasia syndrome; acrocephalosyndactyly; type 1 (Apert); type 2 (Apert); type 3 (Saethre-Chotzen); type 6 (Pfeiffer); Carpenter syndrome with absent digits and cranial defects; Baller-Gerold syndrome; cephalopolysyndactyly (Greig) "cloverleaf-skull" syndrome; craniofacial dysostosis (Crouzon); craniotolencephalic dysplasia; multiple synostosis syndrome;

(v) **skeletal disorders:** acrodysostosis, CHILD syndrome; chondrodysplasia punctata (Conradi-Hunerman type); chondroectodermal dysplasia; Dyggve-Melchior-Clausen syndrome; frontometaphyseal dysplasia; hereditary osteodystrophy (Albright); hyperostosis (Lenz-Majewski); hypochondroplasia; Klippel-Feil syndrome; Nail-patella syndrome; osteopetrosis (Albers-Schonberg); pyknodysostosis; radial aplasia-thrombocytopenia syndrome; radial hypoplasia pancytopenia syndrome (Fanconi); Roberts-SC phocomelia syndrome;

(c) **inborn errors of metabolism:**

(i) **amino acid disorders:** phenylketonuria; phenylalanine hydroxylase (classical, Type 1);

dihydropteridine reductase (type 4); dihydrobiopterin synthetase (type 5); histidinemia; gamma-glutamylcysteine synthetase deficiency; hyperlysinemia; lysinuric protein intolerance; hyperprolinemia; hydroxyprolinemia; sulfite oxidase deficiency; iminoglycinuria; branched-chain amino acid disorders: hypervalinemia; hyperleucine-isoleucinemia; maple-syrup urine disease; isovaleric academia; glutaric academia (type 2); 3-hydroxy-3-methylglutaryl CoA lyase deficiency; 3-kethothiolase deficiency; biotin-dependent disorders: holocarboxylase deficiency; biotinidase deficiency; propionic academia: type A; Type BC; methylmalonic academia: mutase type (mut+); cofactor affinity type (mut-); adenosylcobalamin synthetase type (cbl A); ATP: cobalamin adenosyltransferase type (cbl B), with homocystinuria, type 1 (cbl C), with homocystinuria, type 2 (cbl D); folate-dependent disorders: congenital defect of folate absorption; dihydrofolate reductase deficiency; methylene tetrahydrofolate reductase deficiency; homocystinuria; hypersarcosinemia; non-ketotic hyperglycinemia; hyper-beta-alaninemia; carnosinase deficiency; homocarnosinase deficiency; Hartnup disease; methionine malabsorption (oasthouse urine disease);

(ii) **carbohydrate disorders:** glycogen storage disorders: type 1, with hypoglycemia (von Gierke); type 2 (Pompe); galactosemia; fructose-1, 6-diphosphatase deficiency; pyruvic acid disorders: pyruvate dehydrogenase complex (Leigh); pyruvate carboxylase deficiency; mannosidosis; fucosidosis; aspartylglucosaminuria;

(iii) **mucopolysaccharide disorders:** alpha-L-iduronidase deficiency; Hurler type; Scheie type, Hurler-Scheie type; iduronate sulfatase deficiency (Hunter type); Heparan N-sulfatase deficiency (Sanfilippo 3A type); N-acetyl-alpha-D-glucosaminidase deficiency (Sanfilippo 3B type); Acetyl CoA; glucosaminide N-acetyltransferase deficiency (Sanfilippo 3C type); N-acetyl-alpha D-glucosaminide 6-sulfatase deficiency (Sanfilippo 3D type); beta-glucuronidase deficiency (Sly type);

(iv) **muco lipid disorders:** alpha-neuraminidase deficiency (type1); N-acetylglucosaminyl phosphotransferase deficiency: I-cell disease (Type 2); Pseudo-Hurler syndrome (type 3); muco lipidosis type 4;

(v) **urea cycle disorders:** carbamyl phosphate synthetase deficiency; ornithine transcarbamylase deficiency; argininosuccinic acid synthetase deficiency (citrullinemia); argininosuccinic acid (ASA) lyase deficiency; arginase deficiency (argininemia);

(vi) **nucleic acid disorders:** Lesch-Nyhan syndrome

(HGPRtase deficiency); orotic aciduria; xeroderma pigmentosum (group A); DeSanctis-Cacchione syndrome;

(vii) **copper**

metabolism disorders: Wilson disease; Menkes disease;

(viii) **mitochondrial**

disorders: Kearns-Sayre syndrome; MELAS syndrome; MERRF syndrome; cytochrome c oxidase deficiency; other mitochondrial disorders;

(ix) **peroxisomal**

disorders: Zellweger syndrome; adrenoleukodystrophy: neonatal (autosomal recessive); childhood (x-linked); infantile Refsum disease; hyperpipecolic academia; chondrodysplasia punctata (rhizomelic type);

(d) **developmental disorders of brain formation:**

(i) neural tube closure defects: anencephaly; spina bifida; encephalocele;

(ii) brain formation defects: Dandy-Walker malformation; holoprosencephaly; hydrocephalus; aqueductal stenosis; congenital x-linked type; Lissencephaly; pachygyria; polymicrogyria; schizencephaly;

(iii) cellular migration defects: abnormal layering of cortex; colpocephaly; heterotopias of gray matter; cortical microdysgenesis

(iv) **intra-neuronal** defects: dendritic spine abnormalities; microtubule abnormalities;

(v) **acquired brain** defects: hydranencephaly; porencephaly; and

(vi) **primary (idiopathic)** microcephaly.

B. **Medically fragile:**

Eligible recipients who have been diagnosed with a medically fragile condition before reaching age 22, and who:

(1) have a developmental disability or developmental delay, or who are at risk for developmental delay; and

(2) have a chronic physical condition which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary and is characterized by one or more of the following:

(a) have a life-threatening condition, characterized by reasonably frequent periods of acute exacerbation, which requires frequent medical supervision or physician consultation, and which, in the absence of such supervision or consultation, would require hospitalization; or have frequent, time-consuming administration of specialized treatments which are medically necessary; or dependence on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not

limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(b) require [ICF/MR] an ICF/IID LOC.

C. **Disabled and elderly:**

Eligible recipients who are elderly (age 65 or older), blind or disabled, as determined by the MAD disability determination unit utilizing social security disability guidelines, who require NF LOC and either reside in the community, are institutionalized, or are at risk of institutionalization.

D. **AIDS:** Eligible recipients who have been diagnosed as having AIDS or AIDS-related condition (ARC) and who require NF LOC.

E. **Brain-injury (BI):** Eligible recipients through age 65 with an injury to the brain of traumatic or acquired origin resulting in total or partial functional disability or psychosocial impairment or both. The BI eligible recipient must have a documented BI diagnosis, as included in the international classification of diseases (ICD-9-CM or its successor). The MAD usage of brain injury does not apply to brain injuries that are congenital, degenerative, induced by birth trauma or neurological disorders related to the aging process, or chemically caused brain injuries that are a result of habitual substance abuse. Additional criteria include:

(1) the term applies to open and closed head injuries caused by an insult to the brain from an outside physical force, anoxia, electrical shock, shaken baby syndrome, toxic and chemical substances, near-drowning, infections, tumors, or vascular lesions;

(2) BI may result in either temporary or permanent, partial or total impairments in one or more areas including, but not limited to: cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perceptual and motor abilities, psychosocial behavior, physical functions, information processing and speech; and

(3) the individual must require NF LOC.

F. After initial eligibility has been established for a recipient, on-going eligibility must be re-determined on an annual basis. [8.314.6.13 NMAC - Rp, 8.314.6.13 NMAC, 10-15-12; A, 6-28-13]

8.314.6.14 **E L I G I B L E** **RECIPIENT AND EOR**

RESPONSIBILITIES: Mi via eligible recipients have certain responsibilities to participate in the waiver. Failure to comply with these responsibilities or other program rules and service standards can result in termination from the program. The eligible recipient and EOR have the following

responsibilities:

A. To maintain eligibility the eligible recipient must complete required documentation demonstrating medical and financial eligibility both upon application and annually at recertification, meet in person with the TPA for a comprehensive LOC assessment in the eligible recipient's home, an agreed upon location or an inpatient setting, and seek assistance with the application and the recertification process as needed from a mi via consultant.

B. To participate in mi via, the eligible recipient must:

(1) comply with the rules and regulations that govern the program;

(2) collaborate with the consultant to determine support needs related to the activities of self-direction;

(3) collaborate with the consultant to develop an SSP using the IBA in accordance with mi via program rules and service standards;

(4) use state funds appropriately by only requesting and purchasing goods and services covered by the mi via program in accordance with program rules which are identified in the eligible recipient's approved SSP;

(5) comply with the approved SSP and not exceed the AAB;

(a) if the eligible recipient does not adequately allocate the resources contained in the AAB resulting in a premature depletion of the AAB amount during an SSP year due to mismanagement or failure to properly track expenditures, the failure to properly allocate does not substantiate a claim for a budget increase (i.e., if all of the AAB is expended within the first three months of the SSP year, it is not justification for an increase in the budget for the SSP year);

(b) revisions to the AAB may occur within the SSP year, and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect;

(i) the SSP must be amended first to reflect a change in the eligible recipient's needs or circumstances before any revisions to the AAB can be requested;

(ii) other than for critical health and safety reasons, budget revisions may not be submitted to the TPA for review within the last 60 calendar days of the budget year;

(c) no mi via program funds can be used to purchase goods or services prior to TPA approval of the SSP and annual budget request;

(d) any funds not utilized within the SSP and AAB year cannot be carried over into the following year;

(6) access consultant services based upon identified need(s) in order to carry out the approved SSP;

(7) collaborate with the consultant to appropriately document service delivery and maintain those documents for evidence of services received;

(8) report concerns or problems with any part of the mi via program to the consultant or if the concern or problem is with the consultant, to MAD or DOH;

(9) work with the TPA agent by attending scheduled meetings, in the eligible recipient's home if necessary and providing documentation as requested;

(10) respond to requests for additional documentation and information from the consultant provider, FMA, and the TPA within the required deadlines;

(11) report to the local HSD income support division (ISD) office within 10 calendar days any change in circumstances, including a change in address, which might affect eligibility for the program; changes in address or other contact information must also be reported to the consultant provider and the FMA within 10 calendar days;

(12) report to the TPA and consultant provider if hospitalized for more than three consecutive nights so that an appropriate LOC can be obtained; and

(13) keep track of all budget expenditures and assure that all expenditures are within the AAB; and

(14) have monthly contact and meet face-to-face quarterly with the consultant.

C. **A d d i t i o n a l** responsibilities of the eligible recipient or EOR:

(1) Submit all required documents to the FMA to meet employer-related responsibilities. This includes, but is not limited to documents for payment to employees and vendors and payment of taxes and other financial obligations within required timelines.

(2) Report any incidents of abuse, neglect or exploitation to the appropriate state agency.

(3) Arrange for the delivery of services, supports and goods.

(4) Hire, manage, and terminate employees.

(5) Maintain records and documentation.

D. **V o l u n t a r y** **termination:** [~~Current waiver the~~] Eligible recipients are given a choice of receiving services through an existing waiver or mi via. Mi via [~~the~~] eligible recipients, who transition from the current traditional waivers (CoLTS (c), DD, MF, or AIDS) and decide to discontinue self-directing their services, may return to the traditional waiver in accordance with the mi via rules and service standards. [~~The~~] Eligible recipients who are eligible under the BI category of eligibility and choose to discontinue self-direction may be transitioned to CoLTS (c)

services.

E. **I n v o l u n t a r y** **termination:** A mi via eligible recipient may be terminated involuntarily by MAD and offered services through [~~another MAD~~] a non self-directed waiver or the medicaid state plan under the following circumstances.

(1) The eligible recipient refuses to follow mi via rules after receiving focused technical assistance on multiple occasions, support from the program staff, consultant, or FMA, which is supported by documentation of the efforts to assist the eligible recipient.

(2) The eligible recipient is in immediate risk to his/her health or safety by continued self-direction of services, e.g., the eligible recipient is in imminent risk of death or serious bodily injury related to participation in the waiver. Examples include but are not limited to the following:

(a) The eligible recipient refuses to include and maintain services in his/her SSP and AAB that would address health and safety issues identified in his/her medical assessment or challenges the assessment after repeated and focused technical assistance and support from program staff, consultant, or FMA.

(b) The eligible recipient is experiencing significant health or safety needs, and, after a referral to the state contractor for level of risk determination and assistance, refuses to incorporate the state contractor's recommendations into his/her SSP and AAB.

(c) The eligible recipient exhibits behaviors which endanger him/herself or others.

(3) The eligible recipient misuses mi via funds following repeated and focused technical assistance and support from the consultant or FMA, which is supported by documentation.

(4) The eligible recipient commits medicaid fraud.

(5) The eligible recipient who is involuntarily terminated from mi via will be offered a non self-directed waiver alternative. If transfer to another waiver is authorized by MAD and accepted by the eligible recipient, he/she will continue to receive the services and supports from mi via until the day before the new waiver services start. This will ensure that no break in service occurs. The mi via consultant and the service coordinator in the new waiver will work closely together with the eligible recipient to ensure that the eligible recipient's health and safety is maintained.

[8.314.6.14 NMAC - Rp, 8.314.6.14 NMAC, 10-15-12; A, 6-28-13]

8.314.6.15 S E R V I C E DESCRIPTIONS AND COVERAGE

CRITERIA: The services covered by mi via are intended to provide a community-based alternative to institutional care for

an eligible recipient that allows greater choice, direction and control over services and supports in a self-directed environment. Mi via services must specifically address a therapeutic, rehabilitative, habilitative, health or safety need that results from the eligible recipient qualifying condition. The mi via program is the payor of last resort. The coverage of mi via services must be in accordance with the mi via program rules and service standards.

A. **General requirements regarding mi via covered services.** To be considered a covered service under the mi via program, the following criteria must be met. Services, supports and goods must:

(1) directly address the eligible recipient's qualifying condition or disability;

(2) meet the eligible recipient's clinical, functional, medical or habilitative needs;

(3) be designed and delivered to advance the desired outcomes in the eligible recipient's service and support plan; and

(4) support the eligible recipient to remain in the community and reduce the risk of institutionalization.

B. **Consultant pre-eligibility/enrollment services:** Consultant pre-eligibility/enrollment services are intended to provide information, support, guidance, and assistance to individuals during the medicaid financial and medical eligibility process. The level of support provided is based upon the unique needs of the individual. When an opportunity to be considered for mi via waiver services is offered to an individual, he/she must complete a primary freedom of choice form. The purpose of this form is for the individual to select a consultant provider. The chosen consultant provider provides pre-eligibility/enrollment services as well as on-going consultant services. Once the individual is determined to be eligible for mi via waiver services, the consultant service provider will continue to provide consultant services to the newly enrolled eligible recipient as set forth in the consultant service standards.

C. **Consultant services:** Consultant services are required for all mi via eligible recipients to educate, guide, and assist the eligible recipients to make informed planning decisions about services and supports. The consultant helps the eligible recipient develop the SSP based on his/her assessed needs. The consultant assists the eligible recipient with implementation and quality assurance related to the SSP and AAB. Consultant services help the eligible recipient identify supports, services and goods that meet his/her needs, meet the mi via requirements and are covered mi via services. Consultant services provide support to eligible recipients to maximize their ability to self-direct in mi via.

(1) **Contact requirements:**

Consultant providers shall make contact with the eligible recipient in person or by telephone at least monthly for a routine follow-up. Consultant providers shall meet in person with the eligible recipient at least quarterly; one visit must be conducted in the eligible recipient's home. Quarterly visits will be conducted for the following purposes:

(a) review and document progress on implementation of the SSP;

(b) document usage and effectiveness of the 24-hour emergency backup plan;

(c) review SSP/budget spending patterns (over and under-utilization);

(d) assess quality of services, supports and functionality of goods in accordance with the quality assurance section of the SSP and any applicable mi via rules and service standards;

(e) document the eligible recipient's access to related goods identified in the SSP;

(f) review any incidents or events that have impacted the eligible recipient's health, welfare or ability to fully access and utilize support as identified in the SSP; and

(g) other concerns or challenges raised by the eligible recipient, legal representative, or authorized representative.

(2) **Change of consultants:** Consultants are responsible for assisting eligible recipients to transition to another consultant provider when requested. Transition from one consultant provider to another can only occur at the first of the month.

(3) **Critical incident management responsibilities and reporting requirements:** The consultant provider shall provide training to eligible recipients and EORs regarding recognizing and reporting critical incidents. Critical incidents include abuse, neglect, exploitation, emergency services, law enforcement involvement, environmental hazards and eligible recipient deaths. This eligible recipient training shall also include reporting procedures for eligible recipients, employees, eligible recipients, representatives or other designated individuals. The consultant provider shall report incidents of abuse, neglect and exploitation as directed by the state. The consultant provider shall maintain a critical incident management system to identify, report, and address critical incidents. The consultant provider is responsible for follow-up and assisting the individual to help ensure health and safety when a critical incident has occurred. Critical incident reporting requirements:

(a) For mi via eligible recipients who have been designated with an [ICF/MR] ICF/IID level of care, critical incidents should be directed in the following manner.

(i) The DOH triages,

and investigates all reports of alleged abuse, neglect, exploitation, and other incidents for mi via services provided by community-based waiver service agencies, to include expected and unexpected deaths. The reporting of incidents is mandated pursuant to 7.1.13 NMAC. Any suspected abuse, neglect, or exploitation must be reported to the children, youth and families department (CYFD)/child protective services (CPS) for eligible recipients under 18 years or to the ALTSD/adult protective services (APS) for eligible recipients 18 years or older by reporting or faxing an incident report (IR). Additionally, the IR form must be faxed to DOH within 24 hours of knowledge of an incident or the following business day when an event occurs on a weekend or holiday. Anyone may report an incident; however, the person with the most direct knowledge of the incident is the individual who is required to report the incident.

(ii) When an incident is reported late, and the mi via service is provided by a community-based waiver service agency, a letter is sent to the provider stating that an incident report was received beyond the required 24-hour timeline for reporting. The letter further reiterates the requirement to report incidents within 24 hours. The consequences of non-compliance may result in sanctions, as set forth in 7.1.13.12 NMAC.

(iii) With respect to waiver services provided by any employee, contractor or vendor other than a community-based waiver service agency, any suspected abuse, neglect, or exploitation must be reported to the CYFD/CPS for the eligible recipient under 18 years or to the ALTSD/APS for eligible recipients age 18 years or older by reporting or faxing an incident report. See NMSA 1978, Sections 27-7-14 through 27-7-31 (Adult Protective Services Act) and in NMSA 1978, Sections 32A-4-1 through 32A-4-34 (Child Abuse and Neglect Act).

(b) For eligible recipients in mi via that have been designated with an NF LOC, critical incidents should be directed to:

(i) ALTSD/APS for eligible recipients age 18 years or older or CYFD/CPS for eligible recipients under 18 years for critical incidents involving abuse, neglect or exploitation; and

(ii) MAD, quality assurance bureau as well as the MCO, if applicable; the consultant provider shall fax all critical incidents in the standardized format provided by the CYFD/CPS and ALTSD/APS.

D. Personal plan facilitation: Personal plan facilitation supports planning activities that may be used by the eligible recipient to develop his/her SSP as well as identify other sources of support outside the SSP process. This

service is available to an eligible recipient one time per budget year.

(1) In the scope of personal planning facilitation, the personal plan facilitator will:

(a) meet with the eligible recipient and his/her family (or legal representative, as appropriate) prior to the personal planning session to discuss the process, to determine who the eligible recipient wishes to invite, and determine the most convenient date, time and location; this meeting preparation shall include an explanation of the techniques the facilitator is proposing to use or options if the facilitator is trained in multiple techniques; the preparation shall also include a discussion of the role the eligible recipient prefers to play at the planning session, which may include co-facilitation of all or part of the session;

(b) arrange for participation of invitees and location;

(c) conduct the personal planning session;

(d) document the results of the personal planning session and provide a copy to the eligible recipient, the consultant and any other parties the eligible recipient would like to receive a copy.

(2) Elements of this report shall include:

(a) recommended services to be included in the SSP;

(b) services from sources other than MAD to aid the eligible recipient;

(c) long-term goals the participant wishes to pursue;

(d) potential resources, especially natural supports within the eligible recipient's community that can help the eligible recipient to pursue his or her desired outcomes(s)/goal(s); and

(e) a list of any follow-up actions to take, including time lines.

(3) Provide session attendees, including the eligible recipient, with an opportunity to provide feedback regarding the effectiveness of the session.

E. Living supports:

(1) **Homemaker/direct support services:** Homemaker/direct support services are provided on an episodic or continuing basis to assist the eligible recipient with activities of daily living, performance of general household tasks, and enable the eligible recipient to accomplish tasks he/she would normally do for him/herself if he/she did not have a disability. Homemaker/direct support services are provided in the eligible recipient's home and in the community, depending on the eligible recipient's needs. The eligible recipient identifies the homemaker/direct support worker's training needs, and, if the eligible recipient is unable to do the training him/herself, the eligible recipient arranges for the needed training. Services are not intended to

replace supports available from a primary caregiver.

(a) Two or more eligible recipients living in the same residence, who are receiving services and supports from mi via will be assessed both independently and jointly to determine coverage of services and supports that are shared. Services and supports will be approved based on common needs and not individual needs unless the TPA has assessed that the eligible recipient has an individual need for the services.

(b) Personal care services are covered under the medicaid state plan as enhanced early and periodic screening, diagnostic and treatment (EPSDT) benefits for waiver eligible recipients under 21 years.

(2) **Home health aide services:** Home health aide services provide total care or assist an eligible recipient 21 years and older in all activities of daily living. Home health aide services assist the eligible recipient in a manner that will promote an improved quality of life and a safe environment for the eligible recipient. Home health aide services can be provided outside the eligible recipient's home. State plan home health aide services are intermittent and provided primarily on a short-term basis. Mi via home health aide services are hourly services for eligible recipients who need this service on a more long-term basis. Home health aide services are not duplicative of homemaker services. Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Homemakers do not have this ability to perform such tasks.

(3) **Assisted living:** A residential service that includes personal care and supportive services (homemaker, chore, attendant services, meal preparation); medication oversight (to the extent permitted under state law); and 24-hour, on-site response capability to meet scheduled or unpredictable eligible recipient needs and to provide supervision, safety, and security.

(a) Services also include social and recreational programming. Coverage does not include 24-hour skilled care or supervision or the cost of room or board.

(b) Nursing and skilled therapy services are incidental, rather than integral, to the provision of assisted living services.

(c) Services (other than those included in the bundle of "assisted living" services) provided by third parties must be coordinated with the assisted living provider.

(d) Eligible recipients who utilize this service cannot utilize mi via homemaker/direct support, environmental modifications, emergency response, customized community supports and customized in-home living supports services because they are provided by assisted living services.

(4) **Customized in-home living supports:** Customized in-home living

supports are related to the eligible recipient's qualifying condition or disability and enable him/her to live in his /her apartment or house. Services must be provided in homes/apartments owned or leased by the eligible recipient or in the eligible recipient's home.

(a) These services and supports are provided in the eligible recipient's home and are individually designed to instruct or enhance home living skills as well as address health and safety.

(b) Customized in-home living supports include assistance with activities of daily living and assistance with the acquisition, restoration, or retention of independent living skills. This service is provided on a regular basis at least four or more hours per day one or more days per week as specified in the service plan.

(c) Eligible recipients receiving customized in-home living supports may not use homemaker/direct support or home health aide services because they are provided by customized in-home living supports.

F. Community membership supports:

(1) **Community direct support:** Community direct support providers deliver support to the eligible recipient to identify, develop and maintain community connections and access social and educational options.

(a) The community direct support provider may be a skilled independent contractor or a hired employee depending on the level of support needed by the eligible recipient to access the community.

(b) The community direct support provider may instruct and model social behavior necessary for the eligible recipient to interact with community members or in groups, provide assistance in ancillary tasks related to community membership, provide attendant care and help the eligible recipient schedule, organize and meet expectations related to chosen community activities.

(c) Community direct support services include:

(i) provide assistance to the eligible recipient outside of his/her residence and segregated facilities;

(ii) promote the development of social relationships and build connections within local communities;

(iii) support the eligible recipient in having frequent opportunities to expand roles in the community to increase and enhance natural supports, networks, friendships and build a sense of belonging; and

(iv) assist in the development of skills and behaviors that strengthen the eligible recipient's connection with his or her community.

(d) The skills to assist someone in a community setting may be different than

those for assisting an eligible recipient at home. The provider will:

(i) demonstrate knowledge of the local community and resources within that community that are identified by the eligible recipient on the SSP; and

(ii) be aware of the eligible recipient's barriers to communicating and maintaining health and safety while in the community setting.

(2) **Employment supports:** Employment supports include job development, support to find a job, and job coaching after available vocational rehabilitation supports have been exhausted. The job coach provides training, skill development, and employer consultation that an eligible recipient may require while learning to perform specific work tasks on the job; co-worker training; job site analysis; situational or vocational assessments and profiles; education of the eligible recipient and co-workers on rights and responsibilities; and benefits counseling.

(a) Job development is a service provided to eligible recipients by skilled staff. The service has five components:

(i) job identification and development activities;

(ii) employer negotiations;

(iii) job restructuring;

(iv) job sampling; and

(v) job placement.

(b) Employment supports will be provided by staff at current or potential work sites. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by eligible recipients receiving waiver services as a result of their disabilities, but does not include payment for the supervisory activities rendered as a normal part of the business setting.

(c) Documentation is maintained in the file of each eligible recipient receiving this service that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA.

(d) FFP is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(i) incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(ii) payments that are passed through to users of supported employment programs; or

(iii) payments for training that is not directly related to an individual's supported employment program;

(iv) FFP cannot be claimed to defray expenses associated with

starting up or operating a business.

(3) **Customized community supports:** Customized community supports can include participation in congregate community day programs and centers that offer functional meaningful activities that assist with acquisition, retention, or improvement in self-help, socialization and adaptive skills for an eligible recipient. Customized community supports may include adult day habilitation, adult day health and other day support models. Customized community supports are provided in community day program facilities and centers and can take place in non-institutional and non-residential settings. These services are provided at least four or more hours per day one or more days per week as specified in the eligible recipient's SSP.

G. **Health and wellness:**

(1) **Extended state plan skilled therapy for eligible recipients 21 years and older:** Enhanced state plan skilled therapy for adults includes physical therapy, occupational therapy or speech language therapy. [CoLTS] Mi via services are provided when skilled therapy services under the state plan are exhausted or not a benefit. Eligible recipients 21 years and older on mi via access therapy services under the state plan for acute and temporary conditions that are expected to improve significantly in a reasonable and generally predictable period of time. Therapy services provided to eligible recipients 21 years or older in mi via focus on improving functional independence, health maintenance, community integration, socialization, and exercise, or enhance support and normalization of family relationships.

(a) **Physical therapy:** Diagnosis and management of movement dysfunction and the enhancement of physical and functional abilities. Physical therapy addresses the restoration, maintenance and promotion of optimal physical function, wellness and quality of life related to movement and health. Physical therapy activities do the following:

- (i) increase, maintain or reduce the loss of functional skills;
- (ii) treat a specific condition clinically related to the eligible recipient's disability;
- (iii) support the eligible recipient's health and safety needs; or
- (v) identify, implement, and train on therapeutic strategies to support the eligible recipient and his/her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(b) **Occupational therapy:** Diagnosis, assessment, and management of functional limitations intended to assist adults to regain, maintain, develop, and build skills that are important for independence,

functioning, and health. Occupational therapy services typically include:

- (i) customized treatment programs to improve the eligible recipient's ability to perform daily activities;
- (ii) comprehensive home and job site evaluations with adaptation recommendations;
- (iii) skills assessments and treatment;
- (iv) assistive technology recommendations and usage training;
- (v) guidance to family members and caregivers;
- (vi) increasing or maintaining functional skills or reducing the loss of functional skills;
- (vii) treating specific conditions clinically related to the eligible recipient's developmental disability;
- (viii) support for the eligible recipient's health and safety needs, and
- (ix) identifying, implementing, and training therapeutic strategies to support the eligible recipient and his/her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(c) **Speech and language pathology:** Diagnosis, counseling and instruction related to the development and disorders of communication including speech fluency, voice, verbal and written language, auditory comprehension, cognition, swallowing dysfunction, oral pharyngeal or laryngeal, and sensor motor competencies. Speech language pathology is also used when an eligible recipient requires the use of an augmentative communication device. Based upon therapy goals, services may be delivered in an integrated natural setting, clinical setting or in a group. Services are intended to:

- (i) improve or maintain the eligible recipient's capacity for successful communication or to lessen the effects of the eligible recipient's loss of communication skills; or
- (ii) improve or maintain the eligible recipient's ability to eat foods, drink liquids, and manage oral secretions with minimal risk of aspiration or other potential injuries or illness related to swallowing disorders;
- (iii) identify, implement and train therapeutic strategies to support the eligible recipient and his/her family or support staff consistent with the eligible recipient's SSP desired outcomes and goals.

(d) **Behavior support consultation:** Behavior support consultation services consist of functional support assessments, treatment plan development, and training and support coordination for the eligible recipient's related to behaviors that compromise the eligible recipient's quality

of life. Based on the eligible recipient's SSP, services are delivered in an integrated, natural setting, or in a clinical setting. Behavior support consultation:

- (i) informs and guides the eligible recipient's service and support employees/vendors toward understanding the contributing factors to the eligible recipient's behavior;
- (ii) identifies support strategies to ameliorate contributing factors with the intention of enhancing functional capacities, adding to the provider's competency to predict, prevent and respond to interfering behavior and potentially reducing interfering behavior(s);
- (iii) supports effective implementation based on a functional assessment and SSP;
- (iv) collaborates with medical and ancillary therapies to promote coherent and coordinated services addressing behavioral issues, and to limit the need for psychotherapeutic medications; and
- (v) monitors and adapts support strategies based on the response of the eligible recipient and his/her service and support providers.

(e) **Nutritional counseling:** Nutritional counseling services include assessment of the eligible recipient's nutritional needs, development or revision of the eligible recipient's nutritional plan, counseling and nutritional intervention and observation and technical assistance related to implementation of the nutritional plan.

(f) **Private duty nursing for adults:** Private duty nursing for eligible recipients 21 years or older includes activities, procedures, and treatment for the eligible recipient's physical condition, physical illness or chronic disability. Services include medication management, administration and teaching, aspiration precautions, feeding tube management, gastrostomy and jejunostomy care, skin care, weight management, urinary catheter management, bowel and bladder care, wound care, health education, health screening, infection control, environmental management for safety, nutrition management, oxygen management, seizure management and precautions, anxiety reduction, staff supervision, behavior and self-care assistance.

(2) **Specialized therapies:** Specialized therapies are non-experimental therapies or techniques that have been proven effective for certain conditions. Experimental or investigational procedures, technologies or therapies and those services covered as a Medicaid state plan benefit are excluded. Services in this category include the following therapies:

(a) **Acupuncture:** Acupuncture is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury,

pain or other physical or mental condition by controlling and regulating the flow and balance of energy, form and function to restore and maintain physical health and increased mental clarity. Acupuncture may provide effective pain control, decreased symptoms of stress, improved circulation and a stronger immune system, as well as other benefits. See acupuncture and oriental medicine practitioners 16.2.1 NMAC.

(b) **Biofeedback:** Biofeedback uses visual, auditory or other monitors to feed back to eligible recipients physiological information of which they are normally unaware. This technique enables an eligible recipient to learn how to change physiological, psychological and behavioral responses for the purposes of improving emotional, behavioral, and cognitive health and performance. The use of biofeedback may assist in strengthening or gaining conscious control over the above processes in order to self-regulate. Biofeedback therapy is also useful for muscle re-education of specific muscle groups or for treating pathological muscle abnormalities of spasticity, incapacitating muscle spasm, or weakness.

(c) **Chiropractic:** Chiropractic care is designed to locate and remove interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. Chiropractic therapy may positively affect neurological function, improve certain reflexes and sensations, increase range of motion, and lead to improved general health. See 16.4.1 NMAC.

(d) **Cognitive rehabilitation therapy:** Cognitive rehabilitation therapy services are designed to improve cognitive functioning by reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems. Treatments may be focused on improving a particular cognitive domain such as attention, memory, language, or executive functions. Alternatively, treatments may be skill-based, aimed at improving performance of activities of daily living. The overall goal is to restore function in a cognitive domain or set of domains or to teach compensatory strategies to overcome specific cognitive problems.

(e) **Hippotherapy:** Hippotherapy is a physical, occupational, and speech-language therapy treatment strategy that utilizes equine movement as part of an integrated intervention program to achieve functional outcomes. Hippotherapy applies

multidimensional movement of a horse for eligible recipients with movement dysfunction and may increase mobility and range of motion, decrease contractures and aid in normalizing muscle tone. Hippotherapy requires that the eligible recipient use cognitive functioning, especially for sequencing and memory. Eligible recipients with attention deficits and behavior problems are redirecting attention and behaviors by focusing on the activity. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities, and individual speech therapy. The activities may also help improve respiratory function and assist with improved breathing and speech production.

(f) **Massage therapy:** Massage therapy is the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Massage increases the circulation, helps loosen contracted, shortened muscles and can stimulate weak muscles to improve posture and movement, improves range of motion and reduces spasticity. Massage therapy may increase, or help sustain, an eligible recipient's ability to be more independent in the performance of activities of daily living; thereby, decreasing dependency upon others to perform or assist with basic daily activities. See massage therapists 16.7.1 NMAC.

(g) **Naprapathy:** Naprapathy focuses on the evaluation and treatment of neuro-musculoskeletal conditions, and is a system for restoring functionality and reducing pain in muscles and joints. The therapy uses manipulation and mobilization of the spine and other joints, and muscle treatments such as stretching and massage. Based on the concept that constricted connective tissue (ligaments, muscles, and tendons) interfere with nerve, blood, and lymph flow, naprapathy uses manipulation of connective tissue to open these channels of body function. See naprapathic practitioners, 16.6.1 NMAC.

(h) **Native American healers:** Native American healing therapies encompass a wide variety of culturally-appropriate therapies that support eligible recipients in their communities by addressing their physical, emotional and spiritual health. Treatments may include prayer, dance, ceremony, song, plant medicines, foods, participation in sweat lodges, and the use of meaningful symbols of healing, such as the medicine wheel or other sacred objects.

(i) **Play therapy:** Play therapy is a variety of play and creative arts techniques

utilized to alleviate chronic, mild and moderate psychological and emotional conditions for an eligible recipient that are causing behavioral problems or are preventing the eligible recipient from realizing his/her potential. The play therapist works integratively using a wide range of play and creative arts techniques, mostly responding to the eligible recipient's direction.

H. Other supports:

(1) Transportation:

Transportation services are offered to enable eligible recipients to gain access to services, activities, and resources, as specified by the SSP. Transportation services under the waiver are offered in accordance with the eligible recipient's SSP. Transportation services provided under the waiver are non-medical in nature whereas transportation services provided under the medicaid state plan are to transport eligible recipients to medically necessary physical and behavioral health services. Payment for via transportation services is made to the eligible recipient's individual transportation employee or to a public or private transportation service vendor. Payment cannot be made to the eligible recipient. Whenever possible, family, neighbors, friends, or community agencies that can provide this service without charge shall be identified in the SSP and utilized.

(2) Emergency response services:

Emergency response services provide an electronic device that enables the eligible recipient to secure help in an emergency at home and avoid institutionalization. The eligible recipient may also wear a portable help button to allow for mobility. The system is connected to the eligible recipient's phone and programmed to signal a response center when a help button is activated. The response center is staffed by trained professionals. Emergency response services include:

(a) testing and maintaining equipment;

(b) training eligible recipients, caregivers and first responders on use of the equipment;

(c) 24-hour monitoring for alarms;

(d) checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.;

(e) reporting emergencies and changes in the eligible recipient's condition that may affect service delivery; and

(f) ongoing emergency response service is covered, but initial set up and installation is not.

(3) **Respite:** Respite is a family support service, the primary purpose of which is to give the primary, unpaid caregiver time away from his/her duties. Respite services include assisting the eligible recipient with routine activities of daily living (e.g.,

bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills, and providing opportunities for leisure, play and other recreational activities; assisting the eligible recipient to enhance self-help skills, leisure time skills and community and social awareness; providing opportunities for community and neighborhood integration and involvement; and providing opportunities for the eligible recipient to make his/her own choices with regard to daily activities. Respite services are furnished on a short-term basis and can be provided in the eligible recipient's home, the provider's home, in a community setting of the family's choice (e.g., community center, swimming pool and park) or at a center in which other individuals are provided care. FFP is not claimed for the cost of room and board as part of respite services.

(4) **Related goods:** Related goods are equipment, supplies or fees and memberships, not otherwise provided through mi via, the medicaid state plan, or medicare.

(a) Related goods must address a need identified in the eligible recipient's SSP and meet the following requirements:

(i) be responsive to the eligible recipient's qualifying condition or disability; and

(ii) meet the eligible recipient's clinical, functional, medical or rehabilitative needs; and

(iii) supports the eligible recipient to remain in the community and reduces the risk for institutionalization; and

(iv) promote personal safety and health; and afford the eligible recipient an accommodation for greater independence; and

(v) decrease the need for other medicaid services; and

(vi) accommodate the eligible recipient in managing his/her household; or

(vii) facilitate activities of daily living.

(b) Related goods must be documented in the SSP, comply with Paragraph (3) of Subsection D of 8.314.6.17 NMAC, and be approved by the TPA. The cost and type of related good is subject to approval by the TPA. Eligible recipients are not guaranteed the exact type and model of related good that is requested. The consultant, TPA or the state can work with the eligible recipient to find other (including less costly) alternatives.

(c) The related goods must not be available through another source and the eligible recipient must not have the personal funds needed to purchase the goods.

(d) These items are purchased from the eligible recipient's AAB.

(e) Experimental or prohibited treatments and goods are excluded.

(5) **Environmental modifications:** Environmental modification services include the purchase and installation of equipment or making physical adaptations to the eligible recipient's residence that are necessary to ensure the health, safety, and welfare of the eligible recipient or enhance the eligible recipient level of independence.

(a) Adaptations include the installation of ramps and grab-bars; widening of doorways/hallways; installation of specialized electric and plumbing systems to accommodate medical equipment and supplies; lifts/elevators; modification of bathroom facilities such as roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing; turnaround space adaptations; specialized accessibility/safety adaptations/additions; trapeze and mobility tracks for home ceilings; automatic door openers/doorbells; voice-activated, light-activated, motion-activated and electronic devices; fire safety adaptations; air filtering devices; heating/cooling adaptations; glass substitute for windows and doors; modified switches, outlets or environmental controls for home devices; and alarm and alert systems or signaling devices.

(b) All services shall be provided in accordance with applicable federal, state, and local building codes.

(c) Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the eligible recipient, such as fences, storage sheds or other outbuildings. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation.

(d) The environmental modification provider must: ensure proper design criteria is addressed in the planning and design of the adaptation; be a licensed and insured contractor(s) or approved vendor(s) that provides construction/remodeling services; provide administrative and technical oversight of construction projects; provide consultation to family members, waiver providers and contractors concerning environmental modification projects to the participant's residence; and inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

(e) Environmental modifications are managed by professional staff available to provide technical assistance and oversight to environmental modification projects.

(f) Environmental modification services are limited to \$7,000 every five years. Environmental modifications must be approved by the TPA.

(g) Environmental modifications are paid from a funding source separate from

the AAB.

[8.314.6.15 NMAC - Rp, 8.314.6.15 NMAC, 10-15-12; A, 6-28-13]

8.314.6.16 NON-COVERED SERVICES: Non-covered services include, but are not limited to the following:

A. services covered by the medicaid state plan (including EPSDT), MAD school-based services, medicare and other third-parties;

B. any service or good, the provision of which would violate federal or state statutes, regulations or guidance;

C. formal academic degrees or certification-seeking education, educational services covered by IDEA or vocational training provided by the public education department (PED), division of vocational rehabilitation (DVR).

D. food and shelter expenses, including property-related costs, such as rental or purchase of real estate and furnishing, maintenance, utilities and utility deposits, and related administrative expenses; utilities include gas, electricity, propane, fire wood, wood pellets, water, sewer, and waste management;

E. experimental or investigational services, procedures or goods, as defined in 8.325.6 NMAC *Experimental or Investigational Procedures, Technologies or Therapies*;

F. any goods or services that a household that does not include a person with a disability would be expected to pay for as a routine household expense;

G. any goods or services that are to be used [primarily] for recreational or diversional purposes;

H. personal goods or items not related to the disability;

I. animals and costs of maintaining animals including the purchase of food, veterinary visits, grooming and boarding but with the exception of training and certification for service dogs;

J. gas cards and gift cards;

K. purchase of insurance, such as car, health, life, burial, renters, home-owners, service warrantees or other such policies;

L. purchase of a vehicle, and long-term lease or rental of a vehicle;

M. purchase of recreational vehicles, such as motorcycles, campers, boats or other similar items;

N. firearms, ammunition or other weapons;

O. gambling, games of chance (such as bingo or lottery), alcohol, tobacco, or similar items;

P. vacation expenses, including airline tickets, cruise ship or other means of transport, guided tours, meals, hotel, lodging or similar recreational expenses;

Q. purchase of usual and customary furniture and home furnishings, *unless* adapted to the eligible recipient's disability or use, or of specialized benefit to the eligible recipient's condition; requests for adapted or specialized furniture or furnishings must include a recommendation from the eligible recipient's health care provider and, when appropriate, a denial of payment from any other source;

R. regularly scheduled upkeep, maintenance and repairs of a home and addition of fences, storage sheds or other outbuildings, *except* upkeep and maintenance of modifications or alterations to a home which are an accommodation directly related to the eligible recipient's qualifying condition or disability;

S. regularly scheduled upkeep, maintenance and repairs of a vehicle, or tire purchase or replacement, *except* upkeep and maintenance of modifications or alterations to a vehicle or van, which is an accommodation directly related to the eligible recipient's qualifying condition or disability; requests must include documentation that the adapted vehicle is the eligible recipient's primary means of transportation;

T. clothing and accessories, *except* specialized clothing based on the eligible recipient's disability or condition;

U. training expenses for paid employees;

V. conference or class fees may be covered for eligible recipients or unpaid caregivers, but costs associated with such conferences or class cannot be covered, including airfare, lodging or meals;

W. consumer electronics such as computers, printers and fax machines, or other electronic equipment that does not meet the criteria specified in Subsection A of 8.314.6.15 NMAC; no more than one of each type of item may be purchased at one time; and consumer electronics may not be replaced more frequently than once every three years;

X. cell phone services that include: fees for data; or more than one cell phone line per eligible recipient; **[and]**

Y. if the eligible recipient requests a good or service, the consultant TPA and the state can work with the eligible recipient to find other (including less costly) alternatives; **and**

Z. dental services utilizing mi via individual budgetary allotments. [8.314.6.16 NMAC - Rp, 8.314.6.16 NMAC, 10-15-12; A, 6-28-13]

8.314.6.17 SERVICE AND SUPPORT PLAN (SSP) AND AUTHORIZED ANNUAL BUDGET(AAB): An SSP and an annual budget request are developed at least annually by the mi via eligible recipient in

collaboration with the eligible recipient's consultant and others that the eligible recipient invites to be part of the process. The consultant serves in a supporting role to the mi via eligible recipient, assisting the eligible recipient to understand mi via, and with developing and implementing the SSP and the AAB. The SSP and annual budget request are developed and implemented in accordance with the mi via program rules and service standards and submitted to the TPA for final approval. Upon final approval the annual budget request becomes an AAB.

A. SSP development process: For development of the participant-centered service plan, the planning meetings are scheduled at times and locations convenient to the eligible recipient. The state obtains information about eligible recipient strengths, capacities, preferences, desired outcomes and risk factors through the LOC assessment and the planning process that is undertaken between the consultant and eligible recipient to develop the participant's SSP. If the participant chooses to purchase personal plan facilitation services, that assessment information would also be used in developing the SSP.

(1) Assessments:

(a) Assessment activities that occur prior to the SSP meeting assist in the development of an accurate and functional plan. The functional assessments conducted during the LOC determination process address the following needs of a person: medical, adaptive behavior skills, nutritional, functional, community/social and employment; LOC assessments are conducted in person and take place in the or the eligible recipient's home, an agreed upon location or an inpatient setting.

(b) Assessments occur on an annual basis or during significant changes in circumstance or at the time of the LOC determination. After the assessments are completed, the results are made available to the eligible recipient and his/her consultant for use in planning.

(c) The eligible recipient and the consultant will assure that the SSP addresses the information and concerns, if any, identified through the assessment process.

(d) Eligible recipient/employer self assessments are completed prior to SSP meetings (eligible recipient/employer self assessments may be revised during the year to address any life changes). The SSP must address areas of need, as recognized in the eligible recipient/employer self-assessment.

(2) Pre-planning:

(a) The consultant contacts the eligible recipient upon his/her choosing mi via to provide information regarding mi via, including the range and scope of choices and options, as well as the rights, risks, and responsibilities associated with self-direction.

(b) The consultant discusses areas of need to address on the eligible recipient's SSP. The consultant provides support during the annual recertification process to assist with completing medical and financial eligibility in a timely manner.

(c) Personal plan facilitators are optional supports. To assist in pre-planning, the eligible recipient is also able to access an approved provider to develop a personal plan.

(3) SSP components: The SSP contains:

(a) the waiver services that are furnished to the mi via eligible recipient, the projected amount, frequency and duration, and the type of provider who furnishes each service;

(i) the SSP must describe in detail how the services or goods relate to the eligible recipient's qualifying condition or disability;

(ii) the SSP must describe how the services and goods support the eligible recipient to remain in the community and reduce his/her risk of institutionalization; and

(iii) the SSP must specify the hours of services to be provided and payment arrangements;

(b) other services needed by the mi via eligible recipient regardless of funding source, including state plan services;

(c) informal supports that complement waiver services in meeting the needs of the eligible recipient;

(d) methods for coordination with state plan services and other public programs;

(e) methods for addressing the eligible recipient's health care needs when relevant;

(f) quality assurance criteria to be used to determine if the services and goods meet the eligible recipient's needs as related to his/her qualifying condition or disability;

(g) information, resources or training needed by the mi via eligible recipient and service providers;

(h) methods to address the eligible recipient's health and safety, such as 24-hour emergency and back-up services; and

(i) the IBA.

(4) Service and support plan meeting:

(a) The eligible recipient receives an LOC assessment and local resource manual prior to the SSP meeting.

(b) The eligible recipient may begin planning and drafting the SSP utilizing those tools prior to the SSP meeting.

(c) During the SSP meeting, the consultant assists the eligible recipient to ensure that the SSP addresses the eligible recipient's goals, health, safety and risks. The eligible recipient and the consultant will assure that the SSP addresses the

information and concerns identified through the assessment process. The SSP must address the eligible recipient's health and safety needs before addressing other issues. The consultant ensures that:

(i) the planning process addresses the eligible recipient's needs and goals in the following areas: health and wellness and accommodations or supports needed at home and in the community;

(ii) services selected address the eligible recipient's needs as identified during the assessment process; needs not addressed in the SSP will be addressed outside the mi via program;

(iii) the outcome of the assessment process for assuring health and safety is considered in the plan;

(iv) services do not duplicate or supplant those available to the eligible recipient through the medicaid state plan or other programs;

(v) services are not duplicated in more than one service code;

(vi) job descriptions are complete for each provider and employee in the plan; job descriptions will include frequency, intensity and expected outcomes for the service;

(vii) the quality assurance section of the SSP is complete and specifies the roles of the eligible recipient, consultant and any others listed in this section;

(viii) the responsibilities are assigned for implementing the plan;

(ix) the back-up plans are complete; and

(x) the SSP is submitted to the TPA after the SSP meeting, in compliance with mi via waiver rules.

B. Individual budgetary allotment (IBA): Each mi via eligible recipient's annual IBA is determined by the state as follows.

(1) Budgetary allotments are based on calculations developed by the state for each mi via population group, including AIDS, [~~former disabled and elderly (D&E)~~ **now**] CoLTS (c), DD or MF waiver, and BI category of eligibility, utilizing historical traditional waiver care plan authorized budgets within the population, minus the case management costs, and minus a 10 percent discount.

(2) The determination of each mi via eligible recipient's sub-group is based on a comprehensive assessment. The eligible recipient then receives the IBA available to that category of need, according to the eligible recipient's age.

(3) A mi via eligible recipient has the authority to expend the IBA through an AAB that is to be expended on a monthly basis and in accordance with the mi via rules and program service standards.

(a) The current mi via rate

schedule, available on the HSD/MAD website under fee schedules, shall be used as a guide in evaluating proposed payment rates for services that are currently covered or similar to currently covered services. The eligible recipient must justify in writing the rate that he/she wishes to pay when that rate exceeds the rate schedule. The eligible recipient must include this justification with the SSP and annual budget request when it is submitted for approval.

(b) The AAB shall contain goods and services necessary for health and safety (i.e., direct care services and medically related goods) which will be given priority over goods and services that are non-medical or not directly related to health and safety. This prioritization applies to the IBA, AAB, and any subsequent modifications.

C. SSP review criteria: Services and related goods identified in the eligible recipient's requested SSP may be considered for approval if the following requirements are met:

(1) the services or goods must be responsive to the eligible recipient's qualifying condition or disability; and

(2) the services or goods must address the eligible recipient's clinical, functional, medical or rehabilitative needs; and

(3) the services or goods must accommodate the eligible recipient in managing his/her household; or

(4) the services or goods must facilitate activities of daily living; or

(5) the services or goods must promote the eligible recipient's personal health and safety; and

(6) the services or goods must afford the eligible recipient an accommodation for greater independence; and

(7) the services or goods must support the eligible recipient to remain in the community and reduce his/her risk for institutionalization; and

(8) the services or goods must be documented in the SSP and advance the desired outcomes in the eligible recipient's SSP; and

(9) the SSP contains the quality assurance criteria to be used to determine if the service or goods meet the eligible recipient's need as related to the qualifying condition or disability; and

(10) the services or goods must decrease the need for other MAD services; and

(11) the eligible recipient receiving the services or goods does not have the funds to purchase the services or goods; or

(12) the services or goods are not available through another source; the eligible recipient must submit documentation that the services or goods are not available through another source, such as the medicaid state

plan or medicare; and

(13) the service or good is not prohibited by federal regulations, state rules and instructions; and

(14) each service or good must be listed as an individual line item whenever possible; when services or goods are 'bundled' the SSP must document why bundling is necessary and appropriate.

D. Budget review criteria: The eligible recipient's proposed annual budget request may be considered for approval, if all of the following requirements are met:

(1) the proposed annual budget request is within the eligible recipient's IBA; and

(2) the proposed rate for each service is within the mi via range of rates for that chosen service; and

(3) the proposed cost for each good is reasonable, appropriate and reflects the lowest available cost for that chosen good; and

(4) the estimated cost of the service or good is specifically documented in the eligible recipient's budget worksheets; and

(5) no employee exceeds 40 hours paid work in a consecutive seven-day period.

E. Modification of the SSP:

(1) The SSP may be modified based upon a change in the eligible recipient's needs or circumstances, such as a change in the eligible recipient's health status or condition or a change in the eligible recipient's support system, such as the death or disabling condition of a family member or other individual who was providing services.

(2) If the modification is to provide new or additional services than originally included in the SSP, these services must not be able to be acquired through other programs or sources. The eligible recipient must document the fact that the services are not available through another source.

(3) The eligible recipient must provide written documentation of the change in needs or circumstances as specified in the mi via service standards. The eligible recipient submits the documentation to the consultant. The consultant initiates the process to modify the SSP by forwarding the request for modification to the TPA for review.

(4) The SSP must be modified before there is any change in the AAB.

(5) The SSP may be modified once the original SSP has been submitted and approved. Only one SSP revision may be submitted at a time, e.g., an SSP revision may not be submitted if an initial SSP request or prior SSP revision request is under initial review by the TPA. This requirement also applies to any re-review or re-consideration of the same revision request. Other than for

critical health and safety reasons, neither the SSP nor the AAB may be modified within 60 days of expiration of the current SSP.

F. Modifications to the annual budget: Revisions to the AAB may occur within the SSP year, and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. The SSP must be amended first to reflect a change in the eligible recipient's needs or circumstances before any revisions to the AAB can be requested.

(1) Budget revisions involve requests to add new goods or services to a budget or to reallocate funds from any line item to another approved line item. Budget revisions must be submitted to the TPA for review and approval. Other than for critical health and safety reasons, budget revisions may not be submitted to the TPA for review within the last 60 days of the budget year.

(2) The amount of the AAB cannot exceed the eligible recipient's annual IBA. The rare exception would be the eligible recipient whose assessed or documented needs, based on his/her qualifying condition, cannot be met within the annual IBA, in which case the eligible recipient would initiate a request for an adjustment through his/her consultant.

(3) If the eligible recipient requests an increase in his/her budget above his/her annual IBA, the eligible recipient must show one of the following circumstances:

(a) chronic physical condition: the eligible recipient has one or more chronic physical conditions, which are identified during the initial or reevaluation of the LOC, that result in a prolonged dependency on medical services or care, for which daily intervention is medically necessary; the eligible recipient's needs cannot be met within the assigned IBA or other current resources, including natural supports, medicaid state plan services, medicare or other sources; and which are characterized by at least one of the following:

(i) a life-threatening condition with frequent or constant periods of acute exacerbation that places the eligible recipient at risk for institutionalization; that could result in the eligible recipient's inability to remember to self-administer medications accurately even with the use of assistive technology devices; that requires a frequency and intensity of assistance, supervision, or consultation to ensure the eligible recipient's health and safety in the home or in the community; or which, in the absence of such skilled intervention, assistance, medical supervision or consultation, would require hospitalization or admission to an NF or [ICF/MR] ICF/IID;

(ii) the need for administration of specialized medications, enteral feeding or treatments that are

ordered by a medical doctor, doctor of osteopathy, certified nurse practitioner or physician's assistant; and require frequent and ongoing management or monitoring or oversight of medical technology;

(b) change in physical health status; the eligible recipient has experienced a deterioration or permanent change in her/her health status such that the eligible recipient's needs for services and supports can no longer be met within the AAB or other current resources, including natural supports, are not covered under the medicaid state plan, medicare or other sources; these are the types of changes that may necessitate an increase in the AAB; the eligible recipient now requires the administration of medications via intravenous or injections on a daily or weekly basis; the eligible recipient has experienced recent onset or increase in aspiration of saliva, foods or liquids; the eligible recipient now requires external feedings, e.g. naso-gastric, percutaneous endoscopic gastrostomy, gastric-tube or jejunostomy-tube; the eligible recipient is newly dependent on a ventilator; the eligible recipient now requires suctioning every two hours, or more frequently, as needed; the eligible recipient now has seizure activity that requires continuous monitoring for injury and aspiration, despite anti-convulsant therapy; the eligible recipient now requires increased assistance with activities of daily living;

(i) the eligible recipient must submit a written, dated, and signed evaluation or letter from a medical specialist either a medical doctor, doctor of osteopathy, certified nurse practitioner or physician's assistant that documents the change in the eligible recipient's health status relevant to the above criteria; the evaluation or letter must have been completed since the last LOC assessment or less than one year from the date the request is submitted, whichever is most recent;

(ii) the eligible recipient may submit additional supportive documentation by others involved in the eligible recipient's care, such as a current individual service plan if the eligible recipient is transferring from another waiver, a recent evaluation from a specialist or therapist, a recent discharge plan, relevant medical records or other documentation or recent statements from family members, friends or other support individuals;

(c) chronic or intermittent behavioral conditions or cognitive difficulties: the eligible recipient has chronic or intermittent behavioral conditions or cognitive difficulties, which are identified during the initial or reevaluation LOC assessment, or the eligible recipient has experienced a change in his/her behavioral health status, for which the eligible recipient requires additional services, supports,

assistance, or supervision to address the behaviors or cognitive difficulties in order to keep the eligible recipient safe; these behaviors and cognitive difficulties are so severe and intense that they result in considerable risk to the eligible recipient, caregivers or the community; require a frequency and intensity of assistance, supervision or consultation to ensure the eligible recipient's health and safety in the home or the community; are likely to lead to incarceration or admission to a hospital, NF or [ICF/MR] ICF/IID; require intensive intervention or medication management by a doctor or behavioral health practitioner or care practitioner; and cannot be effectively addressed within the AAB or other resources, including natural supports, the medicaid state plan, medicare or other sources;

(i) examples of chronic or intermittent behaviors or cognitive difficulties are that the eligible recipient injures him/herself frequently or seriously; has uncontrolled physical aggression toward others; disrupts most activities to the extent that his/her SSP cannot be implemented or routine activities of daily living cannot be carried out; withdraws personally from contact with most others; leaves or wanders away from the home, work or service delivery environment in a way that puts him/herself or others at risk;

(ii) the eligible recipient must submit a written dated and signed evaluation or letter from a medical doctor, doctor of osteopathy, certified nurse practitioner, physician's assistant, psychiatrist or psychologist with a doctorate of psychology that documents the eligible recipient's or behavioral health status relevant to the criteria; if the need for additional budgetary allotment is identified during the LOC assessment, it must be reflected in the assessment; if there has been a change in the eligible recipient's behaviors or cognitive difficulties, additional documentation is required; with a change in the eligible recipient's behavior or cognitive difficulties, the evaluation or letter must have been completed since the last LOC assessment or less than one year from the date the request is submitted, whichever is more recent;

(iii) the eligible recipient may submit additional supportive documentation including a current individual service plan if the eligible recipient is transferring from another waiver, a positive behavioral support plan or assessment, recent notes, a summary or letter from a behavioral health practitioner or professional with expertise in developmental disabilities, brain injury or geriatrics, recent discharge plan, recent recommendations from a rehabilitation facility, any other relevant documentation or recent statements from family members, friends or other support

individuals involved with the eligible recipient;

(d) change in natural supports: the eligible recipient has experienced a loss, as a result of situations such as death, illness, or disabling condition, of his/her natural supports, such as family members or other community resources that were providing direct care or services, whether paid or not; this absence of natural supports or other resources is expected to continue throughout the period for which supplemental funds are requested; the type, intensity or amount of care or services previously provided by natural supports or other resources cannot be acquired within the IBA and are not available through the medicaid state plan, medicare, other programs or sources in order for the eligible recipient to live in a home and community-based setting.

(4) A mi via eligible recipient is responsible for tracking all budget expenditures and assuring that all expenditures are within the AAB. The eligible recipient must not exceed the AAB within any SSP year. The eligible recipient's failure to properly allocate the expenditures within the SSP year resulting in the depletion of the AAB, due to mismanagement of or failure to track the funds, prior to the calendared expiration date does not substantiate a claim for a budget increase (i.e., if all of the AAB is expended within the first three months of the SSP year, it is not justification for an increase in the annual budget for that SSP year). Amendments to the AAB may occur within the SSP year and the eligible recipient is responsible for assuring that all expenditures are in compliance with the most current AAB in effect. Amendments to the AAB must be preceded by an amendment to the SSP.

(5) The AAB may be revised once the original annual budget request has been submitted and approved. Only one annual budget revision request may be submitted at a time, e.g., an annual budget revision request may not be submitted if a prior annual budget revision request is under initial review by the TPA. The same requirement also applies to any reconsideration of the same revision request.

G. SSP and annual budget supports: As specified in the mi via program rules and service standards, the mi via eligible recipient is assisted by the consultant in development and implementation of the SSP and AAB. The FMA assists the eligible recipient with implementation of the AAB. A debit card will be utilized for related good listed on an IBA. The process for loading funding on the debit card is as follows:

(1) following the approval of the SSP by the TPA, the eligible recipient must submit an invoice to the FMA;

(2) the FMA will verify the accuracy of the invoice, then load the

funding onto the debit card for use by the eligible recipient;

(3) the recipient must utilize the funding for the approved related good(s) only and maintain the receipt of purchase for a period of up to six years;

(4) the FMA shall schedule and perform random audits of purchases;

(5) if requested, the eligible recipient must provide verification of the purchase to the FMA within three business days.

H. Submission for approval: The TPA must approve the SSP and associated annual budget request (resulting in an AAB). The TPA must approve certain changes in the SSP and annual budget request, as specified in the mi via program rules and service standards and in accordance with 8.302.5 NMAC, *Prior Authorization and Utilization Review*.

(1) At any point during the SSP and associated annual budget utilization review process, the TPA may request additional documentation from the eligible recipient. This request must be in writing and submitted to both the eligible recipient and the consultant provider. The eligible recipient has 15 working days from the date of the request to respond to the request for additional documentation. Failure by the eligible recipient to submit the requested information may subject the SSP and annual budget request to denial.

(2) Services cannot begin and goods may not be purchased before the start date of the approved SSP and AAB or approved revised SSP and revised AAB.

(3) Any revisions requested for other than critical health or safety reasons within 60 calendar days of expiration of the SSP and AAB are subject to denial for that reason.

[8.314.6.17 NMAC - Rp, 8.314.6.17 NMAC, 10-15-12; A, 6-28-13]

8.314.6.18 P R I O R AUTHORIZATION AND UTILIZATION REVIEW:

All medicaid services, including services covered under this waiver, are subject to utilization review for medical necessity and program requirements. Reviews by HSD/MAD or its designees may be performed before services are furnished, after services are furnished, before payment is made, or after payment is made in accordance with 8.302.5 NMAC, *Prior Authorization and Utilization Review*.

A. Prior authorization: Services, supports, and goods specified in the SSP and AAB require prior authorization from HSD/MAD or its designee. The SSP must specify the type, amount and duration of services. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. Eligibility determination: To be eligible for mi via program services, eligible recipients must require the LOC of services provided in an [HCF-MR] ICF/IID for eligible recipients identified as DD and MF, or in an NF for participants identified as CoLTS (c), diagnosed with AIDS, or BI. Prior authorization of services does not guarantee that applicants/eligible recipients are eligible for medicaid.

C. Reconsideration: If there is a disagreement with a prior authorization denial or other review decision, the consultant provider on behalf of the eligible recipient, can request a reconsideration from the TPA that performed the initial review and issued the initial decision. A reconsideration must be requested within 30-calendar days of the date on the denial notice. Reconsideration requests must be in writing and provide additional documentation or clarifying information regarding the eligible recipient's request for the denied services or goods.

D. Denial of payment: If a service, support, or good is not covered under the mi via program, the claim for payment may be denied by HSD/MAD or its designee. If it is determined that a service is not covered before the claim is paid, the claim is denied. If this determination is made after payment, the payment amount is subject to recoupment or repayment.

[8.314.6.18 NMAC - Rp, 8.314.6.18 NMAC, 10-15-12; A, 6-28-13]

8.314.6.22 G R I E V A N C E / COMPLAINT SYSTEM:

HSD/MAD and DOH operate a grievance/complaint system that affords eligible recipients the opportunity to register grievances or complaints concerning the provision of services under the mi via program. HSD/MAD administers the grievance/complaint process for eligible recipient's in the mi via NF LOC waiver who are brain injured or disabled or elderly. DOH administers the grievance/complaint process for eligible recipients in the [HCF/MR] ICF/IID level of care (LOC) waiver and for eligible recipients in the AIDS program who are in the NF LOC waiver. Eligible recipients may register complaints with either department via e-mail, mail or phone. Complaints will be referred to the appropriate department for resolution. The eligible recipient is informed that filing a grievance or complaint is not a prerequisite or substitute for a fair hearing.

A. A grievance or complaint is required to be addressed within 30 calendar days from the date it was received.

B. Upon receipt of the grievance or complaint, DOH or HSD/MAD enters it into the complaint tracker and informs the contractor or provider of the

grievance or complaint. DOH or HSD/MAD notifies the eligible recipient within one day of receipt of the grievance or complaint who will be responsible for resolution of the grievance or complaint.

C. DOH or HSD/MAD gives the contractor or provider 14 calendar days to resolve the grievance or complaint. If the grievance or complaint contains an issue that may compromise the health or safety of the participant, DOH or HSD/MAD remains involved with the parties until the grievance or complaint is resolved.

D. The contractor or provider shall notify DOH or HSD/MAD of their progress toward resolution of the grievance or complaint. If the grievance or complaint has not been resolved in 14 calendar days, DOH or HSD/MAD becomes involved to ensure that an initial response is issued within 30 calendar days of receipt of the grievance or complaint.

[8.314.6.22 NMAC - Rp, 8.314.6.22 NMAC, 10-15-12; A, 6-28-13]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.6 NMAC, Section 8, effective 7-22-13.

16.12.6.8 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE:

A. As of July 1, [2006] 2005, no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or its predecessor examination used for licensure.

B. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

(1) driver's license with a home address;

(2) voter registration card displaying a home address;

(3) federal income tax return declaring the primary state of residence;

(4) military form no. 2058 - state of legal residence certificate; or

(5) W2 from US government or any bureau, division or agency thereof indicating the declared state of residence (statutory basis: Articles 2E, 4C, and 4D).

C. A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as a primary state of residence. If the foreign country is declared the primary state of residence, a single state

license will be issued by the party state (statutory basis: Article 3E).

D. A license issued by a party state is valid for practice in all other party state unless clearly designated as valid only in the state which issued the license (statutory basis: Article 3A and 3B).

E. When a party state issued a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance (statutory basis: Article 3A, 3B, and 3E).

F. A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed [~~thirty (30)~~ ninety (90)] days.

G. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the [~~thirty (30)~~ ninety (90)] day period in Paragraph (2) shall be stayed until resolution of the pending investigation.

H. The former home state license shall no longer be valid upon the issuance of a new home state license.

I. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's law and rules.

[16.12.6.8 NMAC - N, 1-2-04; A, 2-17-06; A, 7-16-12; A, 7-22-13]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to Section 9 (PUBLIC AGENCY RESPONSIBILITIES) of 6.31.2 NMAC (CHILDREN WITH DISABILITIES/GIFTED CHILDREN), effective June 28, 2013. Subsection B (Public agency funding and staffing) is amended to add new subparagraphs (b), (c), (d), (e) and (f) to align the rule with amendments to 34 CFR Sec. 300.154, with respect to notice and consent requirements required of public agencies prior to accessing a child's or parent's public benefits or insurance. Subparagraph (b) has been renumbered as paragraph (8) and has been amended with respect to children with disabilities who are covered by private insurance benefits. Subparagraph (c) has been renumbered as paragraph (9) and paragraph (8) has been renumbered as paragraph (10).

6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.

B. Public agency funding and staffing.

(1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.

(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.

(3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The

school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement.

(a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center must be on the form posted on the department's website or on a form otherwise approved by the department and must be reviewed and approved by the secretary of public education.

(b) Agreements must provide for:

(i) student evaluations and eligibility;

(ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;

(iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable regulations and rules;

(iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;

(v) a detailed description of the costs for the placement; and

(vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.

(4) Placement of students in public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. The sending school shall be responsible for the provision of special education and related services. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services.

(5) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.154(b) and 300.154(d) through (g), Section 22-13-8 NMSA 1978 and any laws, regulations, executive orders, contractual arrangements or other requirements governing the noneducational payor's obligations.

(6) Risk pool fund. (Puente para los niños fund.)

(a) Local educational agency high

cost fund.

(i) In compliance with 34 CFR Sec. 300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.

(ii) Funds distributed under this program will be on a reimbursable basis.

(b) Application for funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's puente para los niños fund as described on the department's website.

(7) Children with disabilities who are covered by public benefits or insurance. Pursuant to 34 CFR Sec. 300.154(d), a public agency may use the medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below.

(a) With regard to services required to provide FAPE to an eligible child, the public agency:

(i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;

(ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations, but pursuant to 34 CFR Sec. 300.154(f)(2), may pay the cost that the parent otherwise would be required to pay; and

(iii) may not use a child's benefits under a public benefits or insurance program if that use would: (A) decrease available lifetime coverage or any other insured benefit; (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) increase premiums or lead to the discontinuation of benefits or insurance; or (D) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(b) Prior to obtaining the parental consent described in Subparagraph (c) of this paragraph, and prior to accessing the parent or child's public benefits, the public agency must provide written notice to the child's parents, consistent with 34 CFR Sec. 300.503(c). The written notice must be provided annually thereafter.

(i) The notice must include a statement of the parental consent provisions in 34 CFR Sec. 99.30 and 34 CFR Sec. 300.622 and must specify: (A) the personally identifiable information that may

be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the agency to which the disclosure may be made (e.g. New Mexico medicaid program); and (D) that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(ii) The notice must further include: (A) a statement of the "no cost" provisions in 34 CFR Sec. 300.154(d)(2)(i)-(iii); (B) a statement that the parents have the right under 34 CFR Parts 99 and 300 to withdraw their consent to disclosure of their child's personally identifiable information to the New Mexico medicaid program at any time; and (C) a statement that the withdrawal of consent or refusal to provide consent under 34 CFR Parts 99 and 300 to disclose personally identifiable information to the New Mexico medicaid program does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notice to the child's parents consistent with Subparagraph (b) of this paragraph, the public agency must obtain written parental consent as defined by 34 CFR Sec. 300.9. The written consent, consistent with the requirements of 34 CFR Sec. 300.154(d)(2)(iv), must:

(i) meet the requirements of 34 CFR Sec. 99.30 and 34 CFR Sec. 300.622 and must specify: (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the agency to which the disclosure may be made (e.g. New Mexico medicaid program); and

(ii) must specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(d) The public agency is not required to obtain a new parental consent if the following conditions are present:

(i) there is no change in any of the following: the type of services to be provided to the child; the amount of services to be provided to the child; or the cost of the services to be charged to the public benefits or insurance program; and

(ii) the public agency has on file a parental consent meeting the requirements of 34 CFR Sec. 300.9, 34 CFR Sec. 99.30 and 34 CFR Sec. 300.622.

(e) Once the public agency obtains

the one-time consent consistent with 34 CFR Sec. 300.154(d)(2)(iv), the public agency is not required to obtain parental consent before it accesses the child's or parent's public benefits or insurance in the future, regardless of whether there is a change in the type or amount of services to be provided to the child or a change in the cost of the services to be charged to the public benefits or insurance program.

(f) If a child transfers to a new public agency, the new public agency must provide the written notification described in 34 CFR Sec. 300.154(d)(2)(v) and Subparagraph (b) of this paragraph, and must then obtain parental consent meeting the requirements of 34 CFR Sec. 300.154(d)(2)(iv).

(g) **(8) Children with disabilities who are covered by private insurance benefits.** Pursuant to 34 CFR Sec. 300.154(e), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents. The public agency may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations.

(h) **(9)** Pursuant to 34 CFR Sec. 300.154(f):

(i) **(a)** if a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service; and

(ii) **(b)** to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(j) **(10)** Staff training and qualifications.

(a) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of

special education and related services to children with disabilities under Part B of the IDEA.

(b) Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:

(1) provide all information requested by the department;

(2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards;

(3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;

(4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and

(5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

D. Early intervening services set aside funds. Fifteen percent set aside.

(1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.226, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.

(2) Prior to the implementation or use of these set aside funds, the LEA must have on record with the department an approved plan for use of these funds as

described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable.

(3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan must be submitted for approval 60 days before the implementation of the plan.

(4) Each LEA that develops and maintains coordinated, early intervening services must report annually to the department as provided in 34 CFR Sec. 300.226(d).

E. Significant disproportionality.

(1) Pursuant to CFR 34 Sec. 300.646, LEAs must provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:

(a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 300.8;

(b) the placement in particular educational settings of these children; and

(c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.

(2) Each public agency must reserve the fifteen percent early intervening funds if they are identified for having data that is significantly disproportionate in any one of the following categories:

(a) suspension of students with disabilities;

(b) over identification of students with disabilities;

(c) over identification of students in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; and

(d) placement of students with disabilities in a particular setting.

(3) Review and revision of policies, practices and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the LEA must:

(a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and

(b) require any LEA identified

under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR Sec. 300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over-identified under Paragraph (1) of this subsection; and

(c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.

F. Annual determinations. Each local educational agency and other public agencies when applicable shall be assigned an annual determination. The determinations must be consistent with those provided in 34 CFR Sec. 300.603(b) based on the local educational agency's performance on the targets established in the department's state performance plan.

(1) For determinations of needs intervention and needs substantial intervention, the local educational agency may request an opportunity for an informal hearing. The request for hearing must be made in writing to the secretary of public education within 30 days of the date of the determination.

(2) The hearing will afford the local educational agency the opportunity to demonstrate why the department should not make the determination of needs intervention or needs substantial intervention. The hearing shall be conducted by the secretary or the secretary's designee. Formal rules of evidence shall not apply to the hearing.

G. Notification of public agency in case of ineligibility. Pursuant to 34 CFR Sec. 300.221, if the department determines that a public agency is not eligible under Part B of the act, the department shall notify the affected agency of that determination and provide the agency with reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d).

H. Withholding of funds for noncompliance. Pursuant to 34 CFR Sec. 300.222, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR Secs. 300.201-300.213 and 34 CFR Sec. 300.608, the department must reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.

I. Reallocation of funds. If a new LEA is created, the base payment portion of the IDEA subgrant of the LEA that would have served children with disabilities now being served by the new LEA will be adjusted pursuant to 34 CFR Sec. 300.705(b)

(2). IDEA funds to new charter schools that are LEAs will be allocated pursuant to 34 CFR Secs. 76.785-76.799 and 34 CFR Sec. 300.705(b). Pursuant to 34 CFR Sec. 300.705(c) if the department determines that a public agency is adequately providing FAPE to all children with disabilities residing in the area served by that public agency with state and local funds, the department may reallocate any portion of the funds under this part that are not needed by that public agency to provide FAPE to other LEAs in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs or the department may also retain those funds for use at the state level as provided by 34 CFR Sec. 300.705(c).

J. Prohibition on mandatory medication. Each LEA and other public agencies serving students with disabilities are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a student as a condition of attending school, receiving an evaluation under 34 CFR Secs. 300.300 through 300.311, or receiving services under Part B of the IDEA. This prohibition shall be construed as provided in 34 CFR Sec. 300.174(b).

[6.31.2.9 NMAC - Rp, 6.31.2.9 NMAC, 6/29/07; A, 12/31/09; A, 7/29/11; A, 02/29/12; A, 06/28/13]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.4 NMAC, Sections 12 and 19 effective 6/28/13.

3.1.4.12 EXTENSIONS A. GOOD CAUSE FOR EXTENSIONS:

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

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

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure

the services of a person to complete the taxpayer's return, an extension will be given favorable consideration.

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

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

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

B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:

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

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

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

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

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

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

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

(5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business,

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

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

C. EXTENSIONS GRANTED WHEN NO LIABILITY HAS ARISEN:

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

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

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

D. AUTOMATIC EXTENSION FOR REPORT OF FEDERAL FORM 990-T INCOME:

A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal

Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income. Interest will accrue during the period of the automatic extension.

E. AUTOMATIC FEDERAL INCOME TAX EXTENSIONS - GENERAL:

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

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

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

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

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

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

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

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

H. AUTOMATIC EXTENSION FOR CERTAIN INFORMATION RETURNS:

The due date for Form 1099-MISC or pro forma 1099-MISC information returns that are required to be electronically filed pursuant to 3.3.5.19 NMAC is automatically extended to the first day of April of the year following the year for which the statement is made. This extended due date conforms to the federal due date for electronic filings of Form 1099-MISC.

[7/19/67, 11/5/85, 3/31/86, 8/22/88, 8/15/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.12 NMAC - Rn & A, 3 NMAC 1.4.12, 12/29/00; A, 12/30/03; A, 10/31/07; A, 6/28/13]

3.1.4.19 ELECTRONIC FILING OF INFORMATION RETURNS AND REPORTS:

A. Annual income and withholding information returns, federal Form 1099-MISC, pro forma 1099-MISC or successor forms must be filed with the department using a department-approved electronic medium if a pass-through entity has more than fifty (50) New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

B. The annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity has more than fifty New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

C. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least thirty (30) days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a

showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

D. If a pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute.
[3.1.4.19 NMAC - N, 6/28/13]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.204 NMAC, Sections 10, 13, 14, 16 and 19 effective 6/28/13.

3.2.204.10 [ELECTRICITY:

A. Electricity used in manufacturing a product for sale does not become an ingredient or component part of the manufactured product.

B. Example: X, a public service company, sells electricity to Y, a manufacturing company, which is engaged in manufacturing clothing. X contends that the gross receipts derived from the sale of electricity are deductible because the sale is made to a manufacturer. This is not an allowable deduction. Although electricity is defined in the Gross Receipts and Compensating Tax Act as tangible personal property, and without the electricity the manufacturing process could not be completed, the electricity does not become an ingredient or component part of the manufactured article. The receipts from this sale of electricity are not deductible.]

[RESERVED]
[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; 3.2.204.10 NMAC - Rn, 3 NMAC 2.46.10, 5/31/01; Repealed, 6/28/13]

3.2.204.13 PHOTOGRAPHIC SUPPLIES:

A. Sensitized paper, backing paper, frames, mounts, glass and other items used by a photographer, photographic processor or developer in the production of a photograph for sale in the ordinary course of business are ingredients or component parts of a manufactured product.

B. Film used by a photographer is not an ingredient or component part of a finished photograph but it is consumed in the manufacturing of the photographs. Therefore, the sale of film to a photographer may [not] be deducted pursuant to Subsection B of Section 7-9-46 NMSA 1978 as [an ingredient or component part of a manufactured product] tangible personal property consumed in the manufacturing process.

C. This version of 3.2.204.13 NMAC applies to transactions occurring on or after January 1, 2013.

[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; 3.2.204.13 NMAC - Rn, 3 NMAC 2.46.13 & A, 5/31/01; A, 6/28/13]

3.2.204.14 UPHOLSTERY MATERIALS:

Upholsterers are engaged in the business of performing a service and are not manufacturers. If an upholsterer separately states on the billings to customers the value of the material used in conjunction with the services, the upholsterer may issue a Type 2 nontaxable transaction certificate (NTTC) to the supplier of the material. If the value of the material is not separately stated on the billings to customers and either an NTTC is [issued] executed or the materials are purchased without a sales or gross receipts tax appearing on the invoice from an out of state vendor, the upholsterer will be liable for compensating tax on the value of the material.

[1/6/84, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.204.14 NMAC - Rn, 3 NMAC 2.46.14, 5/31/01; A, 6/28/13]

3.2.204.16 RECEIPTS FROM CUSTOM SOFTWARE DEVELOPED FOR MANUFACTURER OF PACKAGED SOFTWARE NOT DEDUCTIBLE:

A. Receipts from developing custom software for a manufacturer of packaged software are not deductible under Section 7-9-46 NMSA 1978 because the deduction under Section 7-9-46 NMSA 1978 is available only for receipts from selling tangible personal property which is incorporated as an ingredient or component part of the manufactured product. Developing custom software is a service.

B. Example: M, a manufacturer of packaged software, contracts with S, a software development company, for the development of a new personal finances program which M plans to manufacture and sell. S is performing a service under this contract. M may not execute and S may not accept a [Type 1 or Type 2] nontaxable transaction certificate.

[4/30/97; 3.2.204.16 NMAC - Rn, 3 NMAC 2.46.16 & A, 5/31/01; A, 6/28/13]

3.2.204.19 TOOLS AND EQUIPMENT:

A. Tools and equipment used by a person engaged in the manufacturing business to manufacture a product are not considered to be consumed in the manufacturing process and therefore are not deductible under Subsection B of Section 7-9-46 NMSA 1978. As used in Section 7-9-46 NMSA 1978 the terms "tool" and "equipment" are defined as follows:

(1) "tool" means an implement, instrument, utensil, usually hand held, that is used to form, shape, fasten, add to, take away from, or otherwise change the manufactured product or equipment; and

(2) "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation.

B. If any piece of a tool or equipment that breaks during the manufacturing process that is required to be replaced, is not considered to be consumed in the manufacturing process and the related receipts are not deductible under Subsection B of Section 7-9-46 NMSA 1978.

C. This version of 3.2.204.20 NMAC applies to transactions occurring on or after January 1, 2013.

[3.2.204.19 NMAC - N, 6/28/13]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.5 NMAC, Sections 7, 11, 14, 15, 16, 17 and 19 effective 6/28/13.

3.3.5.7 DEFINITIONS: For the purposes of 3.3.5 NMAC:

A. "gross amount" includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, nonemployee compensation; and

B. "resident of New Mexico" means (1) an individual domiciled in this state during all of the taxable year, or (2) an individual other than an individual described in Subsection D of [3.2.1.9] 3.3.1.9 NMAC who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile or (3) an individual who moves into this state with the intent to make New Mexico his

permanent domicile; and

C. ~~“net income” means “net income” as defined in Section 7-3A-2C NMSA 1978, after appropriate allocation and apportionment to New Mexico in accordance with the Uniform Division of Income for Tax Purposes Act.~~ [3.3.5.7 NMAC - N, 10/15/03; A, 12/15/10; A, 6/28/13]

3.3.5.11 WITHHOLDING MINIMUMS:

A. With respect to oil and gas proceeds, no withholding from a payment to a remittee is required if:

(1) the sum of all payments, including the subject payment, to that remittee by the remitter in the calendar quarter does not exceed thirty dollars (\$30.00); and

(2) the amount to be withheld from the subject payment is less than ten dollars (\$10.00).

B. With respect to net income from pass-through entities, no withholding is required from a payment to an owner if the sum of all payments, including the subject payment, to that owner by the pass-through entity in the calendar ~~[quarter]~~ year is less than ~~[thirty dollars (\$30.00)]~~ one hundred dollars (\$100.00).

C. The remitter may withhold from a payment described in Subsection A or B of this section without creating a right of action by the remittee or owner against the remitter or pass-through entity.

D. This version of 3.3.5.11 NMAC applies to payments for periods beginning on or after January 1, ~~[2011]~~ 2012. [3.3.5.11 NMAC - N, 10/15/03; A, 12/15/10; A, 6/28/13]

3.3.5.14 [“REASONABLE CAUSE”] REASONS FOR NOT WITHHOLDING: [In addition to the cause set forth in Subsection C of Section 7-3A-5 NMSA 1978,] The department will accept as ~~“reasonable cause”~~ reasons for not withholding, the following:

A. written notification from a remittee that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

C. ~~[through December 31, 2011;]~~ reliance on a New Mexico address, shown on internal revenue service Form

1099-MISC, or a successor form, or on a pro forma 1099-MISC, or a successor form, for those entities that do not receive an internal revenue service Form 1099-MISC, supplied by the remittee; the remitter may rely on a New Mexico address supplied by the remittee for up to thirty (30) days after receiving written notice from the remittee of a change in address to an address outside New Mexico;

D. receipt of a declaration signed under penalty of perjury from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico;

~~[D:]~~ E. receipt of a written agreement from a remittee or owner under 3.3.5.17 NMAC that the remittee or owner will timely report and pay amounts required to be withheld and remitted;

~~[E:]~~ E. inability to make payment of withholding from net income for the quarter due to nonavailability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which case the pass through entity is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;

~~[F:]~~ G. with respect to tax years 2014 through 2018, the pass-through entity has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred income reported in the year; and

~~[G:]~~ H. any other reason acceptable to the secretary, to be determined on a case-by-case basis.

[3.3.5.14 NMAC - N, 10/15/03; A, 12/15/10; A, 6/28/13]

3.3.5.15 STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS:

A. Each remitter shall:

(1) provide a federal Form 1099-MISC, or a successor form, or for those entities that do not receive an internal revenue service Form 1099-MISC, a pro forma 1099-MISC, or a successor form, to each remittee on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the remittee and the state tax withheld;

(2) ~~[an “annual summary of oil and gas proceeds withholding tax” information return with the department on or before the last day of February of the year following the year for which the statement is made]~~

provide a federal Form 1099-MISC, or a successor form, or for those entities that do not receive an internal revenue service Form 1099-MISC, a pro forma 1099-MISC, or a successor form, to the department on or before the last day of February of the year following the year for which the statement is made; and

(3) ~~[attach to the “annual summary of oil and gas proceeds withholding tax” information return copies of federal Form 1099-MISC for each remittee of oil and gas proceeds from whom withholding was required. Remitters who submit federal Form 1099-MISC information returns by magnetic media or electronic transfer using the combined federal/state program, with the records coded to be forwarded to New Mexico, are not required to submit paper copies of federal Form 1099-MISC with the annual summary] provide to the department, a report listing the remittes to whom oil and gas proceeds were paid by the remitter, and for whom the remitter has received an agreement pursuant to Subsection G of Section 7-3A-3 NMSA 1978; this report must include:~~

~~(a) the name, address and federal identification number for each remittee;~~

~~(b) the gross oil and gas proceeds paid to the remittee during the tax year of the report; and~~

~~(c) the remitter’s name, federal identification number and the total New Mexico gross oil and gas proceeds distributed by the remitter to all remittes.~~

~~B. [Remitters who are not required by federal law to file a federal Form 1099-MISC but have a withholding tax obligation pursuant to the Oil and Gas Proceeds Withholding Tax Act must provide New Mexico an “annual statement of withholding of oil and gas proceeds,” a pro forma federal Form 1099-MISC, or a form containing equivalent information, to each remittee and file a copy with the department to satisfy the filing requirements of the Oil and Gas Proceeds Withholding Tax Act.] The reports provided to the department pursuant to Paragraph (3) of Subsection A above, must be provided using a department-approved electronic medium, unless the remitter is not required to file electronically pursuant to 3.3.5.19 NMAC.~~

C. If a pass-through entity is not required to file a federal income tax return for the taxable year, the entity shall file an annual information returns with the department not later than one hundred five (105) days after the end of its taxable year and provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act or Corporate Income and Franchise Tax Act with respect to the owner’s share of the net income.

[3.3.5.15 NMAC - N, 10/15/03; A, 12/15/10;

A, 6/28/13]

3.3.5.16 PRINCIPAL PLACE OF BUSINESS OR RESIDENCE IN NEW MEXICO:

[A. Remitters and pass-through entities are not required to withhold from corporations whose principal place of business is in New Mexico or from individuals who are residents of New Mexico. If the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

B. Corporations: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the corporation because the corporation is described in Paragraphs (2) through (4) of Subsection C of Section 7-3A-3 NMSA 1978 or the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business is in New Mexico except as provided in Subsection E of this section.

(1) Corporations incorporated in New Mexico: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining a copy of the corporation's incorporation papers, sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the public regulation commission website indicating that the corporation is a New Mexico corporation in good standing and its address.

(2) Corporations incorporated in New Mexico or elsewhere: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining from the corporation a statement, signed under penalty of perjury or notarized, that the corporation's principal place of business is in New Mexico and setting forth the physical location of that principal place of business; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the corporation are not acceptable as a physical location of the corporation for the purposes of Section 7-3A-3 NMSA 1978.

C. Individuals: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the individual because the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3

NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the individual is a resident of New Mexico except as provided in Subsection E of this section. The remitter or pass-through entity may establish that the individual is a resident of New Mexico by acquiring and retaining a statement, signed under penalty of perjury or notarized that the individual is a resident of New Mexico and setting forth the physical location of the individual's abode in New Mexico; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the individual are not acceptable as a physical location of the individual for the purposes of Section 7-3A-3 NMSA 1978.]

A. If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments because of the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business or the individuals residence is in New Mexico except as provided in Subsection E of this section.

B. Once the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

C. A remitter or pass-through entity may establish residency if the address provided by the remittee or owner, to which federal Form 1099-MISC, *pro forma* 1099-MISC or successor form is to be mailed. A remitter or pass-through entity may also accept a declaration signed under penalty of perjury, from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico.

D. The obligation to deduct and withhold applies with respect to all remitees and owners that are not corporations or individuals regardless of the remittee's or owner's physical or mailing address, effective January 1, 2011, unless the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection [H] G of Section 7-3A-3 NMSA 1978.

E. This version of 3.3.5.16 NMAC applies to payments for periods beginning on or after January 1, 2011. However, to ease the transition to the new requirements of this section, remitters and pass-through entities may continue to rely on New Mexico addresses pursuant to 3.3.5.12 NMAC for withholding for calendar quarters ending prior to January 1, 2012.

[3.3.5.16 NMAC - N, 12/15/10; A, 6/28/13]

3.3.5.17 O P T I O N A L WITHHOLDING PAYMENT BY REMITTEE, OWNER:

A. A remitter may enter into an agreement with a remittee that the remittee will remit to the taxation and revenue department at the time and in the manner required by the department the amounts that the remitter is required to withhold and remit with respect to payments to the remittee. Similarly, a pass-through entity may enter into an agreement with an owner, except as provided in Subsection E of 3.3.5.17 NMAC, that the owner will remit to the department the amounts that the pass-through entity is required to withhold and remit with respect to payments to the owner.

B. The agreement must be in a form prescribed by the department or substantially equivalent to such form. It must be in the remitter's or pass-through entity's possession at the time it files its annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978. The agreement may remain in effect for a single taxable year, multiple taxable years, or an indefinite term, and may be revoked or amended on mutual agreement of the parties.

C. Upon notice by the department that the remittee or owner has not complied with the requirements of the agreement, the remitter or pass-through entity must revoke the agreement and withhold and remit with respect to future payments to the remittee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Once an agreement has been revoked a new agreement between the remitter and remittee or between the pass-through entity and the owner, may not be entered into for two years from the date the department notifies the remitter or the pass-through entity of the remittee's or owner's failure to pay amounts required by the agreement.

[E-] D. Remittances to the department pursuant to an agreement by a remittee or owner that is subject to corporate income tax or personal income tax may be credited against the remittee's or owner's estimated tax liability pursuant to Section 7-2A-9.1 NMSA 1978 or Section 7-2-12.2 NMSA 1978 since the remittances relate to the remitter's or owner's own corporate income tax or personal income tax liability.

E. Pursuant to Subsections H and I of Section 7-3A-3 NMSA 1978 a pass-through entity that is a personal service business as defined in Subsection J of Section 7-3A-2 NMSA 1978 may not enter into an agreement with its owners.

[3.3.5.17 NMAC - N, 12/15/10; A, 6/28/13]

3.3.5.19 E - F I L I N G REQUIREMENTS:

A. Annual income and withholding information returns, federal Form 1099-MISC, *pro forma* 1099-MISC or successor forms must be filed with the department using a department-approved electronic medium if the remitter or pass-through entity has more than fifty (50) New Mexico payees in a tax year, unless the remitter or pass-through entity obtains an exception pursuant to Subsection C of 3.3.5.19 NMAC.

B. The annual income information report of oil and gas proceeds distributed - no tax withheld, and the annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity or remitter has more than fifty (50) New Mexico payees in a tax year, unless the remitter or pass-through entity obtains an exception pursuant to Subsection C of 3.3.5.19 NMAC.

C. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least thirty (30) days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

D. If a remitter or pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute. [3.3.5.19 NMAC - N, 6/28/13]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.13.9 NMAC, Sections 7 through 10 effective 6/28/13.

3.13.9.7 DEFINITIONS: The terms defined in 3.13.9.7 NMAC apply to the implementation of the film production tax credit.

A. "Direct production expenditures" as defined in Subsection [B] C of Section 7-2F-2 NMSA 1978 includes only those expenditures directly incurred and paid by the qualified production company to the vendor of the services or property and does not include expenditures incurred and paid by a third party even if incurred on behalf of the qualified production company.

B. "Performing artist" as used in Paragraph [2] (1) of Subsection [B] C of Section 7-2F-2 NMSA 1978 includes "stunt coordinators" when the stunt coordinator contracts with the production company under a standard stunt performer's contract.

[3.13.9.7 NMAC - N, 9/30/10, A, 6/28/13]

3.13.9.8 CLAIMING THE FILM PRODUCTION TAX CREDIT:

A. In order to claim an approved film production tax credit, a film production company must complete a timely filed tax return after the close of its taxable year.

B. When determining how an approved film production tax credit will be paid out pursuant to Subsection E of Section 7-2F-1 NMSA 1978, each tax return is equivalent to a single credit claim.

C. Example 1: Two separate film production companies elect to be part of a New Mexico consolidated tax return. Each film production company submits a separate film production tax credit application for approval of direct production expenditures; one application is for two million dollars (\$2,000,000) and the second for one million dollars (\$1,000,000). The department approves both applications. The total amount of three million dollars (\$3,000,000) from the two approved applications will be considered a single credit claim since the two film production companies elect to file as part of a New Mexico consolidated tax return.

D. Example 2: X, a film production company, is organized as a corporation who files its income taxes on a calendar year basis. For tax year 2012, X will file its corporate income tax return on March 15, 2013, and claim the approved film production tax credit amount from the department. The credit claim will be

considered received by the department because the taxpayer filed a complete and timely tax return pursuant to the Corporate Income and Franchise Tax Act.

E. Example 3: A film production company files a complete and timely tax return for a certain tax period. The department does not approve the production company's application for the film production tax credit until after the production company has filed its tax return. The taxpayer ultimately files an amended tax return within three years of the end of the calendar year in which the payment of tax was originally due and at that time, claims the film production tax credit that was previously approved by the department. The credit claim will be considered received because the filing of the amended return by the production company was a complete and timely tax return pursuant to the Corporate Income and Franchise Tax Act. [3.13.9.8 NMAC - N, 6/28/13]

3.13.9.9 DETERMINATION OF PHYSICAL PRESENCE FOR PURPOSES OF CLAIMING THE FILM PRODUCTION TAX CREDIT:

A. Any vendor (provider) who provides goods or performs services, who occupies and maintains one or more physical places of business in New Mexico, not a virtual or online business, has established "physical presence," for purposes of the film production tax credit, if the following conditions are present:

(1) a provider of goods or services, or its employees, or representatives, is available at that provider's place of business during established times;

(2) a provider of goods maintains an inventory of the goods sold at the provider's New Mexico place of business and those goods are held for sale in the vendor's ordinary course of business at that place of business; and

(3) critical elements of any service performed by a service provider occur, are managed at or coordinated from the service provider's place of business.

B. The following indicia will be considered in determining if the above conditions are present:

(1) the provider of the goods or services is a resident or has at least one laborer who is a New Mexico resident, as defined in the Income Tax Act;

(2) a telephone is assigned for the exclusive use by the provider of goods or services at the provider's place of business;

(3) the place of business has been designated for the use of the goods or services provided;

(4) the place of business contains office furniture or equipment for the use by the provider;

(5) the goods or services provider is identified by business name on a sign located in or adjacent to the place of business; and

(6) a client or other persons can expect to communicate, either in person or by telephone, with the goods or services provider, or employees or representatives of the provider, at the place of business.

[3.13.9.9 NMAC - N, 6/28/13]

3.13.9.10 QUALIFICATION OF DIRECT PRODUCTION EXPENDITURES:

A. A payment to a personal service business for the services of a performing artist qualifies as a direct production expenditure if the personal services business:

(1) pays gross receipts tax in New Mexico on the portion of those payments that are qualified expenditures for the film production tax credit; and

(2) deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978 or the film production company deducts and remits, or causes to be deducted and remitted, withheld income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the film production tax credit.

B. Example 1: S, a super loan-out company, receives payments for the services of a performing artist (personal services business) from a film production company. S pays gross receipts tax on the payments they receive and deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S qualifies as a direct production expenditure for purposes of the film production tax credit.

C. Example 2: G, a super loan-out company, receives payments for the services of a performing artist from a film production company and pays gross receipts tax on the payments received. G contracts with P, a payroll service company, to provide payroll services. The film production company by agreement with P causes P to deduct and remit withheld income tax on the payments to the performing artist. The payment from the production company to G qualifies as a direct production expenditure for purposes of the film production tax credit.

D. Example 3: H, a super loan-out company, receives payments for the direct hires (performing artists who do not own their own company) from a film production company and pays gross receipts tax on the payments received. No tax is deducted and remitted on the payments for the direct hires pursuant to Subsection I of Section 7-3A-3 NMSA 1978 because the direct hires are employees of the super loan-out company and wages are excluded from this requirement to withhold. The payment

from the production company to S for the services of the direct hires qualifies as a direct production expenditure for purposes of the film production tax credit.

E. Example 4: A, an actor loan-out company, receives payments for the services of a performing artist from S, a super loan out company. S executes a nontaxable transaction certificate to A and pays gross receipts tax on the payments they receive from the production company for the services of the performing artist. S, or the payroll company by agreement with the production company, deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S for the services of the performing artist qualifies as a direct production expenditure for purposes of the film production tax credit.

F. Example 5: Y, an actor loan-out company (owned by the performing artist), receives payments for the services of a performing artist who is a resident of New Mexico. Y pays gross receipts tax on the payments they receive. No withheld income tax is deducted or remitted on the payments that are due to the performing artist from Y (personal services business) because the obligation to deduct and withhold does not apply to payments made to an individual who is a resident of New Mexico (Subsection C of Section 7-3A-3 NMSA 1978). The payments from the production company to Y for the services of a performing artist qualify as direct production expenditures for purposes of the film production tax credit.

[3.13.9.10 NMAC - N, 6/28/13]

End of Adopted Rules Section

Other Material Related to Administrative Law

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF STATE IMPLEMENTATION PLAN HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on September 5, 2013, beginning at 9:00 am in Room 7103 at San Juan College, 4601 College Boulevard, continuing on September 6, if necessary. The New Mexico Environment Department ("NMED") is proposing to adopt revisions to the New Mexico State Implementation Plan for Regional Haze. The proposed plan establishes requirements for New Mexico to meet the requirements of 40 CFR Section 51.309, including a revised determination of Best Available Retrofit Technology for the San Juan Generating Station, located 15 miles west of Farmington. The proposed plan involves the voluntary retirement of two of the four units at this facility, and the installation of selective non-catalytic reduction on the other two units.

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

The purpose of the public hearing is to consider and take possible action on a petition from NMED regarding revisions to New Mexico's State Implementation Plan under the federal regional haze rule, 40 CFR Section 51.309. The regional haze rule requires states to submit State Implementation Plans to address visibility impairment caused by regional haze in 156 federally-protected parks and wilderness areas, known as Class I areas, including nine such areas in New Mexico.

The proposed revised plan may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico. The full text of NMED's proposed revised State Implementation Plan are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Rita Bates at (505) 476-4304 or by email at rita.bates@state.nm.us.

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

applicable procedures.

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

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on August 16, and should reference the docket number, EIB 13-02 (R) and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N2150
Santa Fe, NM 87505
Phone: (505) 827-2425, Fax (505) 827-2836

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

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

Persons having a disability and needing help in being a part of this hearing process should contact J.C. Borrego by August 16, 2013 at the NMED, Human Resources Bureau, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-5469, telephone 505-827-0424. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised state implementation plan at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF STATE IMPLEMENTATION PLAN HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on September 5 or 6, 2013 in Farmington, New Mexico in Room 7103 at San Juan College, 4601 College Blvd. The hearing will commence immediately following the hearing in EIB No. 13-02 (R), scheduled for September 5 - 6 (as necessary), 2013 at the same location. The purpose of the public hearing is to consider and take possible action on a petition from the New Mexico Environment Department ("NMED") regarding revisions to New Mexico's State Implementation Plan (SIP). NMED is proposing that the Board adopt revisions to the SIP to satisfy the "good neighbor" requirements of Clean Air Act ("CAA") Section 110(a)(2)(D)(i)(II) with respect to visibility for the 8-hour ozone and particulate matter under 2.5 microns in diameter ("PM 2.5") National Ambient Air Quality Standards promulgated in July 1997.

The "Good Neighbor" provision of CAA Section 110(a)(2)(D)(i)(II) requires that each SIP submitted to EPA must address emissions from within the state that affect other states through interstate transport. The U.S. Environmental Protection Agency ("EPA") has determined that New Mexico has satisfied the Good Neighbor provisions with respect to visibility for all emission sources except the San Juan Generating Station ("SJGS").

The NMED's proposed Regional Haze SIP, which will be considered in the hearing in EIB No. 13-02 (R), contains a Best Available Retrofit Technology ("BART") determination for nitrogen oxides ("NOx") for the SJGS. The BART determination calls for a NOx emission rate of 0.23 pounds per million British thermal units (lb/mmBtu) for SJGS Units 1 and 4, and a shutdown by the end of 2017 of SJGS Units 2 and 3. For sulfur dioxide, the Regional Haze SIP calls for a limit of 0.10 lb/mmBtu at SJGS Units 1 and 4. These nitrogen oxide and

sulfur dioxide emission limits exceed the expectations that neighboring states relied upon when developing their own visibility SIPs. Therefore, NMED proposes that the Board adopt these limits as also satisfying the independent requirements of CAA Section 110(a)(2)(D)(i)(II).

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

The proposed revised plan may be reviewed during regular business hours at the NMED Air Quality Bureau office, 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico. The full text of NMED’s proposed State Implementation Plan is available on NMED’s web site at www.nmenv.state.nm.us, or by contacting Rita Bates at (505) 476-4304 or by email at rita.bates@state.nm.us.

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

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

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on August 16, 2013, and should reference the docket number, EIB 13-03 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Pam Castañeda, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N2150

Santa Fe, NM 87505

Phone: (505) 827-2425, Fax (505) 827-2836

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

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

Persons having a disability and needing help in being a part of this hearing process should contact J.C. Borrego by August 16, 2013 at the NMED, Human Resources Bureau, P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502-5469, telephone (505) 827-0424. TDY users please access his number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised state implementation plan at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

End of Other Related Material Section

Submittal Deadlines and Publication Dates 2013

Volume XXIV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	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 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
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Issue Number 16	August 16	August 30
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

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For further information, call (505) 476-7907.